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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ESSAR STEEL ALGOMA, INC., :
Plaintiff, :
vs. : Case No.
SOUTHERN COAL SALES :
CORPORATION, :
Defendant. :
:

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Tuesday, October 30, 2018

Oral Deposition of STEPHEN WAYNE BALL,
taken at the Law Offices Kelley Drye & Warren
LLP, Washington Harbour, Suite 400, 3050 K
Street NW, Washington, D.C., beginning at
9:05 a.m., before Ryan K. Black, a Registered
Professional Reporter, Certified Livenote
Reporter and Notary Public in and for the
District of Columbia.

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2

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1 | Whereupon --

STEPHEN WAYNE BALL,

3 called to testify, having been first duly sworn
4 or affirmed, was examined and testified as
5 follows:

6 EXAMINATION

7 BY MR. BOLLIN:

8 Q. Good morning, Mr. Ball. We just met a
9 minute ago, but, again, for the record my name
10 is Kip Bollin. I'm counsel for Essar Steel
11 Algoma, the plaintiff in this lawsuit.

12 Could you please state your name for
13 the record?

14 A. Stephen Wayne Ball.

15 Q. And you are -- what's your
16 relationship with Southern Coal Sales
17 Corporation?

18 A. I'm vice president and general
19 counsel.

O. So you're a lawyer, correct?

21 A. Yes.

O. Have you been deposed before?

23 A. I have, yes.

Q. And you've taken depositions before?

A. Not in a civil litigation setting.

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1 I've done it in administrative proceedings.

2 Q. Okay.

3 A. I, typically, try my best not to
4 litigate, --

5 Q. God bless you.

6 A. -- but I have done it before, yes.

7 Q. Okay. So I'm going to dispense with
8 going through how this works, because you're as
9 well versed as me. Fair enough?

10 A. That's fair enough.

11 Q. When did you pass the Bar?

12 A. 2001.

13 Q. And where from?

14 A. West Virginia.

15 (Ball Exhibit No. 501, a document
16 titled Second Amended Notice of Rule 30(b)
17 Deposition of Defendant, was marked.)

18 BY MR. BOLLIN:

19 Q. I'm going to hand to you what's been
20 marked as Exhibit 501, which is titled Second
21 Amended Notice of Rule 30(b) Deposition of
22 Defendant.

23 Have you seen this document before?

24 A. I have.

25 Q. And this is the notice of the

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1 deposition pursuant to which you've appeared
2 today?

3 A. Correct.

4 Q. And have you prepared yourself to
5 testify on these topics set forth in the notice?

6 A. Yes.

7 Q. How did you do so?

8 A. I met with our counsel, read
9 deposition transcripts. I reviewed documents
10 that have been provided as part of discovery,
11 and had a few conversations with individuals at
12 Southern Coal.

13 Q. And when you say you met with counsel,
14 you're talking about the folks at Kelley Drye?

15 A. Yes, sir.

16 Q. How many times did you meet with them?

17 A. I met in person with them yesterday,
18 have had numerous phone conversations with them,
19 probably four or five phone conversations.

20 Q. In preparation for this deposition?

21 A. Yes.

22 Q. And how long did you meet yesterday?

23 A. About six-and-a-half hours, and then
24 met for, approximately, an hour this morning.

25 Q. What deposition transcripts did you

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1 review?

2 A. I read portions of Kenny Lambert, Jr.,
3 he goes by Tiger; Tim Fugit [phonetic]; Steve
4 Sarver; Jay Justice.

5 Q. Did you review Summer Harrison's?

6 A. And some excerpts from Summer
7 Harrison's, yes, sir.

8 Q. Did you pick the excerpts or did
9 somebody else?

10 A. A little bit of both. I mean,
11 there were certainly some excerpts that were
12 intentionally shown to me, but then there were
13 other parts that I chose what I read in the
14 transcript.

15 Q. Okay. And what documents did you
16 review?

17 A. I read a summary of the coal supply
18 agreements, or who coal shipments had been made
19 to. I reviewed a summary of bank account
20 transactions, a few bank statements, the coal
21 supply agreement, the first amendment to the
22 coal supply agreement, the term sheet, the draft
23 second amendment to the coal supply agreement,
24 some of the third-party coal contracts that had
25 been disclosed, I think [REDACTED] and [REDACTED]

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1 Q. Anything else?

2 A. If anything else comes to mind, I'll
3 tell you. I've -- there were a lot of documents
4 I reviewed. That's -- just going through it in
5 my head, that's what comes to mind first.

6 Q. Okay. You said you also had
7 conversations with individuals in preparation
8 for your deposition?

9 A. Yes.

10 Q. Who were they?

11 A. I spoke to Summer Harrison, Steve
12 Sarver and Jay Justice.

13 Q. What did you speak with Summer
14 Harrison about?

15 A. I just had a few questions about
16 trying to ascertain bank accounts, who was
17 the holder of the bank account. Frankly, that
18 related to your all's amended complaint. There
19 were some account numbers that were referenced
20 in there, so trying to figure out who those
21 were.

22 I spoke to Steve Sarver just
23 to understand a few things he said in his
24 deposition relating to sampling, and Jay Justice
25 and I discussed production and anticipated

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1 production from 2015 through 2017.

2 Q. Okay. Did you discuss anything else
3 with Jay Justice?

4 A. No.

5 Q. Did you say for 2015 or 2016?

6 A. '15, '16 and '17.

7 Q. Okay. Thank you.

8 Going through the documents in
9 this case, I became aware that you also hold
10 positions with other Justice-related entities,
11 is that fair?

12 A. That's fair. Yes, sir.

13 Q. Okay. I'd like to know what those
14 positions are.

15 A. Okay.

16 Q. Do you happen to know them all off the
17 top of your head?

18 A. Sure.

19 Q. We'll give you a try. Okay.

20 A. So for Southern Coal Corporation
21 and all of its affiliates, which would include
22 Southern Coal Sales Corporation, today I'm vice
23 president and general counsel.

24 Q. You said today.

25 A. Yeah. And, historically, I've also

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1 served as vice president of operations.

2 Q. What were your positions with those
3 companies in 2016?

4 A. In 2016, I would have been secretary
5 and general counsel.

6 Q. Were you VP of Ops in 2016, as well?

7 A. Not in 2016.

8 Q. So secretary and general counsel?

9 A. Yes.

10 MR. BOLLIN: And just so we're clear
11 which companies we're talking about, I'm going
12 to go ahead and hand you an exhibit.

13 (Ball Exhibit No. 502, an
14 organizational chart for Southern Coal
15 Corporation, was marked.)

16 BY MR. BOLLIN:

17 Q. This is being marked as Exhibit 502.

18 First of all, do you recognize Exhibit
19 502?

20 A. Yes.

21 Q. What is it?

22 A. It's an organizational chart for
23 Southern Coal Corporation.

24 Q. Okay. That's the first page. What's
25 the second page?

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1 A. The second page is an organizational
2 chart for Bluestone Resources, Inc.

3 Q. A moment ago you testified that in
4 2016 you were secretary and general counsel for
5 Southern Coal Corporation and all of its
6 affiliates; is that right?

7 A. Correct.

8 Q. Is the first page in Exhibit 502 a
9 full and complete list of the affiliates that
10 you were secretary and general counsel for in
11 2016?

12 MR. ROBECK: Well, I'm going to
13 object, Kip, just to the question. But -- I
14 don't think you intend this, but you've also
15 got Bluestone to go for. And you've limited
16 your question to just Southern Coal Corporation,
17 so we don't know if he had the same position at
18 Bluestone.

19 MR. BOLLIN: Right. No, I was just
20 doing the first page first.

21 MR. ROBECK: Okay. That's what I
22 figured, but the question --

23 THE WITNESS: I believe so, yes.

24 BY MR. BOLLIN:

25 Q. Turning to the second page of Exhibit

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1 502, the Bluestone Resources, Inc., org chart,
2 were you secretary and general counsel for all
3 of these entities on the second page of Exhibit
4 502, as well, in 2016?

5 A. Yes.

6 Q. Did you hold any other positions, in
7 addition to secretary and general counsel, for
8 any of these entities in Exhibit 502 in 2016?

9 A. No.

10 Q. Were you also -- did you also hold
11 officer positions for any other Justice-related
12 entities in 2016?

13 A. Yes.

14 Q. What were those?

15 A. James C. Justice Companies, Inc.

16 Q. What were your positions for James C.
17 Justice Companies, Inc.?

18 A. Secretary and general counsel.

19 Kentucky Fuel Corporation.

Q. And your role there?

21 A. Secretary and general counsel.

22 MR. ROBECK: And we're talking 2016
23 again, right?

24 MR. BOLLIN: Correct.

25 THE WITNESS: A&G Coal Corporation,

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1 secretary and general counsel; Tams Management,
2 Inc., secretary and general counsel; Greenbrier
3 Hotel Corporation, secretary and general
4 counsel.

5 BY MR. BOLLIN:

6 Q. Did you have a role with Coal Mountain
7 Mining Company Limited Partnership LLP?

8 A. No. That entity is not owned by the
9 Justice Family.

10 Q. Do you know who owns it?

11 A. I do not.

12 Q. Did you have a role with Justice
13 Family Farms LLC in 2016?

14 A. I would have served as general
15 counsel. Justice Family Farms does not have
16 officers, although, typically, our LLCs allow
17 for officers in their operating agreements,
18 Justice Family Farms has managers which are
19 James C. Justice, III, and his sister Jillian
20 Justice.

21 Q. And your role was as general counsel
22 to Justice Family Farms LLC?

23 A. I would serve as their general
24 counsel. It's an inactive entity, but if
25 something were to come up with Justice Family

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1 Farms, I would definitely serve as their general
2 counsel.

3 Q. It's inactive now, or it was inactive
4 in 2016?

5 A. Both.

6 Q. Was it inactive in 2015?

7 A. I believe so.

8 Q. In 2016 did you have a role with
9 Bluestone Energy Sales Corporation?

10 A. I would have been secretary and
11 general -- well, I would have been general
12 counsel for Bluestone Energy Sales.

13 Q. Do you know who the officers and
14 directors of Bluestone Energy Sales Corporation
15 were?

16 A. In 2016?

17 Q. Yes.

18 A. President would have been James C.
19 Justice, II. Vice president would have been
20 James C. Justice, III. Treasurer would
21 definitely be James T. Miller. I could check
22 this for you, either myself or James T. Miller
23 would be the secretary. I can't recall at this
24 moment, though.

25 Q. Did you have a role with Mechel

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1 Bluestone in 2016?

2 A. We changed the name of that to
3 Bluestone Mineral.

4 Q. And when did you do that?

5 A. Shortly after we reacquired Bluestone
6 in February of 2015. I can't recall the -- I
7 can't recall the specific date, but it would
8 have been in the first half of 2015.

9 Q. So Mechel Bluestone and Bluestone
10 Mineral, Inc., are the same entity?

11 A. Correct.

12 Q. Okay. Did you have a role with that
13 company?

14 A. The same as all Bluestone subsidiaries
15 and affiliates, general counsel and secretary.

16 Q. We've gone through all your roles in
17 2016. Did you have the same roles with the same
18 companies in 2015?

19 A. Yes.

20 Q. And did you have the same roles with
21 the same companies in 2016 -- I'm sorry, 2017?

22 A. No. My title changed in January of
23 2017.

24 Q. What did your title become in January
25 of 2017?

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1 A. Vice president and general counsel,
2 and he goes by Terry, but James, Terry Miller,
3 replaced me as secretary. So he's now secretary
4 and treasurer.

5 Q. Of all of the entities set forth in
6 Exhibit 502?

7 A. Yes.

8 Q. Did you become vice president general
9 counsel of all of the entities set forth in
10 Exhibit 502 on the same date in 2017?

11 A. Approximately. There was a shift due
12 to James C. Justice, II, becoming Governor of
13 West Virginia, and so he had to step down as a
14 day-to-day officer of the entities. And when
15 he did that, we had a change. James C. Justice,
16 III, became president since James C. Justice,
17 II, was no longer president. I became vice
18 president, and Terry Miller became secretary and
19 treasurer. The reason I can't say for sure that
20 that all happened on the exact same day is, it
21 took a few days to get that papered, --

22 Q. Okay. It --

23 A. -- but all around the approximate same
24 time.

25 Q. Okay. Thank you. I appreciate that.

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1 For all of the entities identified in
2 Exhibit 502, did they share the same officers
3 and directors in 2016?

4 A. I think it's fair to say all of the
5 corporations did. I think some of the LLCs,
6 just the nomenclature would have had a manager
7 or a member versus directors and officers.

8 Q. Were the managers and directors of the
9 LLCs the same individuals who were officers and
10 directors of the corporations in Exhibit 502?

11 A. The managers would be the same as the
12 directors.

13 Q. Who were the managers of James
14 C. -- I'm sorry, Justice Family Farms, LLC?

15 A. In what year?

16 Q. 2016.

17 A. James C. Justice, II, and James C.
18 Justice, III.

19 Q. And who were the directors of the
20 corporation set forth in Exhibit 502 in 2016?

21 A. James C. Justice, II, and James C.
22 Justice, III.

23 Q. And who were the managers of the LLC
24 set forth in Exhibit 502 in 2016?

25 A. I just want to make sure, what was

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1 your last question?

2 MR. BOLLIN: Could you read it?

3 THE REPORTER: Two questions ago?

4 THE WITNESS: Yeah. I feel like --

5 did he ask about 2016 twice?

6 BY MR. BOLLIN:

7 Q. I did, but the first one was for the
8 corporations and the second one was for the
9 LLCs.

10 A. Okay. I thought the managers had been
11 asked twice.

12 Q. It may have. I apologize.

13 A. Okay. It's James C. Justice, II, and
14 James C. Justice, III.

15 Q. So James C. Justice, II, and James
16 C. Justice, III, are the directors of all the
17 corporations set forth in Exhibit 502 and the
18 managers of all the LLCs set forth in Exhibit
19 502.

20 MS. BYROADE: Objection to the extent
21 you're asking about the current -- your
22 question's about the present.

23 BY MR. BOLLIN:

24 Q. In 2016.

25 A. But with one caveat, like, JCJ Coal

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1 Group, for example, is member managed instead
2 of manager managed, so Bluestone Mineral, as its
3 sole member, would manage it. And same thing
4 with James C. Justice Companies LLC, it's
5 member-managed, and so it would be controlled by
6 JCJ Coal Group.

7 Q. On the first page?

8 A. Yeah. I think on the first page all
9 those LLCs are manager managed.

10 Q. And then on the second page, the LLCs
11 are managed by the corporation that owns the
12 LLC?

13 A. Correct. As its sole member.

14 Q. And so, for example, James C. Justice
15 Companies LLC is managed by JCJ Coal Group LLC?

16 A. Correct.

17 Q. Who is JCJ Coal Group LLC managed by?

18 A. Bluestone Mineral, Inc.

19 Q. And who is Bluestone Mineral, Inc.,
20 managed by?

21 A. As a corporation, its directors and
22 officers.

23 Q. Okay. Who are its directors and
24 officers?

25 A. James C. Justice, II, and James C.

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1 Justice, III, are the directors in 2016. And
2 the officers were James C. Justice, II, was
3 president. James C. Justice, III, was executive
4 vice president. I was secretary. James T.
5 Miller was treasurer.

6 Q. And the officers you just identified,
7 are those the same officers for all of the
8 corporations identified in Exhibit 502, both
9 first and second page --

10 MR. ROBECK: Objection. Asked and
11 answered.

12 BY MR. BOLLIN:

13 Q. -- in 2016?

14 A. Yes.

15 Q. For Southern Coal Sales Corporation,
16 you were a secretary in 2016; is that right?

17 A. Correct.

18 Q. Were there stock certificates issued
19 by Southern Coal Sales Corporation to its owner?

20 A. Typically, we do issue stock
21 certificates. There would be a single
22 certificate issued to Southern Coal Corporation.

23 Q. Do you know if that happened?

24 A. I don't know right off the top of my
25 head if that happened, but I'm just saying, as

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1 a matter of course, we typically do issue
2 certificates.

(Ball Exhibit No. 503, an Agreement in
Lieu of Annual Meeting of Sole Shareholder of
Southern Coal Sales Corporation for years
2013 through 2018, was marked.)

7 BY MR. BOLLIN:

8 Q. I'm handing you what's been marked as
9 Exhibit Number 503. Do you recognize the
10 exhibit?

11 A. Yes.

12 Q. What is it?

13 A. It's an Agreement in Lieu of Annual
14 Meeting of Sole Shareholder of Southern Coal
15 Sales Corporation. The first page is for 2013,
16 and the second page is the same document for
17 2014. Third page, same document for 2015.
18 Fourth page, same document for 2016. Fifth page
19 same document for 2017. And the last page is
20 same document for 2018.

21 Q. Didn't Southern Coal Sales Corporation
22 change its name?

23 A. It did.

24 Q. And what's its current name?

25 A. Nevada Holdings.

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1 Q. When did that happen?

2 A. I think it was in January of 2017.

3 Q. Okay. I see here January 17, 2017,
4 does that sound about right?

5 A. That sounds about right, yes.

6 Q. Okay. So why does the last page of
7 Exhibit 503 state that it's the Agreement in
8 Lieu of Annual Meeting of Sole Shareholder of
9 Southern Coal Sales Corporation?

10 A. That's a mistake.

11 Q. Did you create the documents set forth
12 in Exhibit 503?

13 A. I would have created the earlier
14 years. In the latter years, probably someone
15 else would have done that.

16 Q. And how can we tell the difference?

17 A. I just know because I know the ones
18 that I did. And in 2013, '14 and '15 I would
19 have been the only person doing that.

20 Q. Okay.

21 A. In recent years, I've had some help.
22 There's a gentleman by the name of Charlie
23 Hinthorne that works in our finance department,
24 but he helps me from time to time with
25 administrative matters. And when we do

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1 the annual minutes, he helps me prepare them
2 sometimes.

3 Q. Okay. So you prepared 2013, '14 and
4 '15?

5 A. Yeah. I'm comfortable saying I would
6 have definitely prepared those years.

7 Q. Now, each one of those has an
8 electronic signature, right?

9 A. That's definitely my signature.
10 It could be electronic. I may have used
11 electronic.

12 Q. I mean, it's identical from year to
13 year, correct?

14 A. It appears to be, yeah.

15 Q. So first of all, why did you have an
16 agreement in lieu of an annual meeting?

17 A. Since I've been around the companies,
18 that's just how it's always been done with it
19 being a privately held business, the sole
20 shareholders being either directly or indirectly
21 the Justice family, that's just
22 the way we choose to do it.

23 Q. Do you kind -- do you discuss -- well,
24 first of all, the sole shareholder was Southern
25 Coal Sales Corporation, right?

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1 A. Southern Coal Corporation.

2 Q. Oh, I'm sorry. You're right.

3 The sole shareholder of Southern Coal Sales
4 Corporation was Southern Coal Corporation;
5 is that right?

6 A. Correct. That's right. Yes.

7 Q. And who directed you to create this
8 Agreement in Lieu of Annual Meeting?

9 A. Typically, I would ask either Jay
10 Justice or Jim Justice -- I would tell them
11 that it was time to do the annual minutes, and
12 I would ask them if there were any changes to
13 officers or directors. And, typically, the
14 answer was, no, it's the same as what we had
15 last year, and then I would take care of it
16 from there.

17 Q. Did you prepare Agreements in Lieu of
18 Annual Meetings for all of the Justice entities
19 for which you served as secretary at the same
20 time every year?

21 A. Generally speaking, yes.

22 Q. Each of these first three years, in
23 Exhibit 503, 2013, 2014 and 2015, each were
24 dated the 1st of May; --

25 A. Yeah.

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1 Q. -- is that right?

2 A. Correct.

3 Q. Were these documents actually created
4 on the 1st of May?

5 A. Somewhere thereabouts.

6 Q. There was a form, you used the same
7 form and changed the date every year?

8 A. Yes.

9 Q. And then in 2016, you had some help
10 from Charlie Hinthorne?

11 A. It's possible.

12 Q. Okay.

13 A. I just know that in '16 Charlie
14 started helping me with minute books and keeping
15 up minutes and things of that nature.

16 Q. And so you don't know exactly who or
17 when Exhibit 503 -- strike that. It's poorly
18 phrased.

19 Do you know exactly who prepared or
20 when the May 1st, 2016, Agreement in Lieu of
21 Annual Meeting document was created?

22 A. No.

23 Q. I notice in 2017 we've shifted, and
24 instead of it being May of the year we've now
25 got January 15th of 2017?

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1 A. Correct.

2 Q. Okay. And why the change?

3 A. That was precipitated by Mr. Justice
4 being sworn in as Governor. James C. Justice,
5 II, becoming Governor of West Virginia.

6 Q. And who are the new directors in 2017?

7 A. James C. Justice, III, and Jillian
8 Justice.

9 Q. And James C. Justice, III, goes by
10 Jay, right?

11 A. Correct.

12 Q. Okay. And did this correspond with
13 the change in ownership of the Southern Coal
14 Corporation?

15 A. Ownership did not change.

16 Q. Okay. Who was the owner of Southern
17 Coal Corporation?

18 A. James C. Justice, II, James C. Justice,
19 III, and Jillian Justice.

20 Q. Okay. Did the officers and directors
21 of -- well, I think we've already established
22 that. Strike that.

23 For the 2017 and 2018 Agreements in
24 Lieu of Annual Meeting that are set forth in
25 Exhibit 503, is it fair to say that you don't

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1 know who prepared those?

2 A. I think I did the one in 2017, because
3 I was definitely involved with getting all of
4 this documented when Mr. Justice took office
5 as Governor. And I don't recall in 2018.

6 Q. The 1st of January 2018 was a holiday,
7 right?

8 A. Yes.

9 Q. Do you believe that the Agreement in
10 Lieu was created on the 1st of January 2018?

11 A. I don't know.

12 (Ball Exhibit No. 504, a document
13 titled Agreement in Lieu of Annual Meeting of
14 Board of Directors of Southern Coal Sales
15 Corporation from 2013 through 2018, was marked.)

16 BY MR. BOLLIN:

17 Q. I'm handing you what's been marked as
18 Exhibit 504.

19 Do you recognize this document?

20 A. I do, yes.

21 Q. And what is it?

22 A. It's the Agreement in Lieu of Annual
23 Meeting of Board of Directors of Southern Coal
24 Sales Corporation. The first page is for 2013,
25 and it continues on for each year through 2018

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1 being the last page.

2 Q. And were these Agreements in Lieu
3 created by you or at your direction?

4 A. Yes.

5 Q. And are you able to identify which of
6 these documents you created?

7 A. Not specifically, but it would be
8 consistent with the answers I just gave, which
9 I'm fairly confident in saying '13, '14 and '15
10 would have definitely been me. I think '17
11 also would have been me, given the special
12 circumstances. I can't say for sure on '16 or
13 '18.

14 Q. Were these Agreements in Lieu created
15 on or about the date set forth, or were they
16 created after the fact?

17 A. Typically, they would be on or about
18 the date set forth.

19 Q. Okay. Were any of these created much
20 past the date set forth on the document?

21 A. Not that I'm aware of.

22 Q. Okay. Do you know whether any of the
23 Agreements in Lieu in Exhibit 503 were created
24 on dates much after the date set forth on each
25 agreement in lieu?

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1 A. Not that I'm aware of.

2 Q. After Mr. Hinthorne creates an
3 Agreement in Lieu of Annual meeting, does he
4 show it to you, or does he just put it in the
5 file? What's he do?

6 A. It could be both. Sometimes he'll
7 ask me to look it over, and there have been
8 instances where he also just files it. He and
9 I will have a conversation before we start
10 updating the minutes for the year, and if he has
11 any questions about whether there have been any
12 changes or anything like that, we go through
13 those. And then, you know, he prepares them.
14 It's happened both ways. There's been times
15 where I don't see them again, and then there's
16 certainly been times where he's asked me to
17 double-check them.

18 Q. Going back to Exhibit 503, the 2016
19 agreement, do you know when this agreement was
20 created?

21 A. The 2016 one?

22 Q. Yes.

23 A. Not specifically, no. Typically, they
24 would be on or about the date in the agreement,
25 though.

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1 Q. Right.

2 A. If it wasn't exactly May 1st, it would
3 be close to it.

4 Q. So you're confident that it wasn't
5 created months after May 1st, 2016?

6 A. Yes.

7 Q. And how do you know that?

8 A. Just by experience. I mean,
9 typically, we do these at the same time each
10 year, and I would expect -- I don't remember any
11 extraordinary circumstances that year, so I
12 would expect it to be around that date.

13 Q. And you create all the Agreements in
14 Lieu for all of the corporations at the same
15 time?

16 A. Yes.

17 MR. BOLLIN: I'm sorry to do this, but
18 can we take a short break?

19 THE WITNESS: Sure.

20 (Recess taken.)

21 BY MR. BOLLIN:

22 Q. Turning back to Exhibit 502, the org
23 chart, --

24 A. Okay.

25 Q. -- does this org chart reflect the

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1 organization of Southern Coal Corporation now or
2 in 2016?

3 A. I'm not aware of any changes for
4 Southern Coal Corporation between 2016 and 2017,
5 so I think it would be yes to both years.

6 Q. Okay. How about the second page, is
7 this reflective of the organization of Bluestone
8 Resources, Inc., now or in the past?

9 A. Both.

10 Q. Okay. So it's consistent? It hasn't
11 changed?

12 A. Correct.

13 Q. Bluestone Resources, Inc., who are the
14 owners?

15 A. James C. Justice, II, and James C.
16 Justice, III.

17 Q. Who are the officers?

18 A. What timeframe?

19 Q. 2016. Thank you.

20 A. James C. Justice, II, was president.
21 James C. Justice, III, was executive vice
22 president. I was secretary, and Terry Miller
23 was treasurer.

24 Q. Who were the directors?

25 A. James C. Justice, II, and James C.

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1 | Justice, III,

2 Q. And then that all changed in January
3 of 2017?

4 A. Correct.

5 Q. And how did it change?

6 A. The ownership stayed the same, but the
7 directors changed to James C. Justice, II, and
8 Jillian Justice. President changed to James C.
9 Justice, III. Vice president changed to myself.
10 And James T. Miller became secretary and
11 treasurer.

12 Q. Do all of the Southern Coal
13 Corporation affiliates identified on Page 1
14 of Exhibit 502 have the same employees?

A. I don't understand. You mean --

O. Do they share the same employees?

17 A. Well, today all of these companies are
18 idled when they were operating; for example,
19 Four Star Resources was a surface mine, it,
20 certainly, would have different employees than
21 Infinity Energy, Inc., would have, which is a
22 separate surface mine.

23 Q. Okay. So at the mines themselves, the
24 employees were different?

25 A Correct

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1 Q. Okay. What about the main office,
2 were the employees the same?

3 A. It would depend. Sometimes, like, an
4 accountant would be on Infiniti Energy, Inc.'s,
5 payroll. There are other times that certain
6 overhead services such as accounting, legal,
7 engineering, those employees would be on the
8 parent company and then they would be shared
9 with the subsidiaries.

10 Q. How do you decide when to share
11 employees between the parent company, Southern
12 Coal Corporation, and the subsidiaries?

13 A. I think it varies from time to time,
14 but, typically, it depends on whether the
15 subsidiary would be large enough to justify
16 having a single accountant or a single engineer
17 solely dedicate to that entity. If, for
18 example, it wasn't large enough or didn't have
19 enough production to justify having its own
20 engineering staff, then, in that instance, that
21 would be shared from the corporate or parent
22 company level.

23 Q. Okay. And the parent or corp -- well,
24 who is the parent or corporate level entity that
25 shares their employees with the subsidiaries?

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1 A. For this group, it would be Southern
2 Coal Corporation.

3 Q. So Southern Coal Corporation would
4 share its employees with its subsidiaries so
5 that they could do whatever work they needed to
6 get done?

7 A. Yes.

8 Q. Okay. Was Southern Coal Corporation
9 compensated for that?

10 A. I don't know if I understand the
11 question.

12 Q. Well, was there an agreement? Was
13 there an employee-sharing agreement between
14 Southern Coal Corporation and its subsidiaries?

15 A. Nothing formalized, no.

16 Q. Okay. Rather, whenever one of the
17 summer -- when -- strike that.

18 When one of the subsidiaries required
19 services, it could turn to Southern Coal
20 Corporation, who would provide them to the
21 subsidiary free of charge, correct?

22 A. Yes. And, like I said, this,
23 typically, related to what I would call either
24 kind of professional or administrative-type
25 services. At the mine site, they definitely

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1 would have been employed by the operating
2 company. This was -- the main three functions
3 would be accounting, legal and engineering.

4 Q. Were there individuals that were
5 employees of all of these entities?

6 A. Not that I'm aware of.

7 Q. Okay. What about Summer Harrison, who
8 did she work for?

9 A. It changes from time to time.

10 Q. Okay. In 2016, do you know who she
11 worked for?

12 A. Not specifically.

13 Q. I asked Summer and she didn't know
14 either.

15 A. That makes me feel a little better.

16 Q. Turning to the second page in
17 Exhibit 502, those entities and subsidiaries of
18 Bluestone Resources, Inc., did you follow the
19 same basic pattern for Bluestone Resources,
20 Inc.'s, subsidiaries? Did they use the services
21 and borrow employees from Bluestone Resources,
22 Inc., as needed?

23 A. The concept was similar. The employer
24 was Bluestone Industries, Inc., for this group.

25 Q. Okay. So Bluestone Industries, Inc.,

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1 is a subsidiary of Bluestone Mineral, Inc.,
2 right?

3 A. Correct.

4 Q. Okay. And Bluestone Mineral, Inc.,
5 is the only subsidiary of Bluestone Resources,
6 Inc.?

7 A. Correct.

8 Q. Okay. And Bluestone Industries,
9 Inc., employed all of the employees who
10 performed services for the entities identified
11 on Page 2 of Exhibit 502?

12 MR. ROBECK: Objection; form.

13 THE WITNESS: It would be similar
14 to what we discussed with Southern Coal, the
15 services that relate to corporate office-type
16 functions, accounting, engineering, legal. I
17 include payroll with accounting. But mine site
18 employees would be employed by the particular
19 operating entity.

20 BY MR. BOLLIN:

21 Q. Okay. Did Bluestone Resources, Inc.,
22 have any of its own employees?

23 A. No.

24 Q. Did Bluestone Mineral, Inc., have any
25 of its own employees?

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1 A. No.

2 Q. Who did the work of those entities?

3 A. The -- the Blue -- the people employed
4 by Bluestone Industries, Inc.

5 Q. Okay.

6 A. Bluestone Mineral is just a holding
7 company, so there would be nothing to do, other
8 than the things we've talked about, annual
9 filings with the Secretary of State's Office,
10 things of that nature. But there wouldn't be
11 any operational activity within Bluestone
12 mineral.

13 Q. All the entities identified in
14 Exhibit 502, did they operate out of -- are they
15 headquartered out of the same office?

16 A. Yes.

17 Q. And what is that office?

18 A. 302 South Jefferson Street, Roanoke,
19 Virginia.

20 Q. Now, we've talked about some other
21 entities that are not on this organizational
22 chart, and I'm going to try to do this
23 efficiently and painlessly, but we'll see
24 how it goes.

25 A. Okay.

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1 Q. First of all, do these other
2 entities, James C. Justice Companies, Inc.,
3 Tams Management, Inc., Bluestone Energy Sales
4 Corporation, A&G Coal Corporation and Justice
5 Family Farms LLC, are they also headquartered in
6 the same place?

7 A. Yes.

8 Q. Do those entities I just identified
9 share the same professional staff as the
10 entities set forth on Exhibit 502?

11 MR. ROBECK: Can you read that list
12 again, I'm sorry, for me?

13 MR. BOLLIN: Sure.

14 James C. Justice Companies, Inc.,
15 Tams Management, Inc., Bluestone Energy Sales
16 Corporation, A&G -- that's A ampersand G -- Coal
17 Corporation and Justice Family Farms LLC.

18 BY MR. BOLLIN:

19 Q. Do they --

20 A. I'm sorry, I was going to say, can you
21 remind me of the question? Sorry.

22 Q. Do they share a headquarters with the
23 entities identified in Exhibit 502?

24 MS. BYROADE: On the second page of
25 that exhibit or --

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1 MR. BOLLIN: Both.

2 THE WITNESS: Yes.

3 BY MR. BOLLIN:

4 Q. Let me ask you a quick question about
5 Coal Mountain Mining Company Limited Partnership
6 LLP. You said that the Justice entities do not
7 own that company, right?

8 A. Correct.

9 Q. And you don't know who does?

10 A. Not aware of it.

11 Q. Was there a time when one of the
12 Justice entities did own Coal Mountain?

13 A. Not that entity.

14 Q. Okay. What did they --

15 A. I mean, Coal Mountain, as it's
16 generally known as an operation, the Justice
17 entities owned Coal Mountain Surface Mine
18 operation through the entity Dynamic Energy,
19 Inc., which is on the second page of Exhibit
20 502, but that entity I have no familiarity with.

21 Q. Okay. So Dynamic Energy, Inc., on the
22 second page of Exhibit 502, is a subsidiary of
23 Bluestone Mineral, Inc., right?

24 A. Correct.

25 Q. Okay. And that was the entity that

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1 owned Coal Mountain Mine?

2 A. The Coal Mountain Number 1 Surface
3 Mine.

4 Q. Okay. The Dynamic Energy, Inc.,
5 entity still exists today but is inactive?

6 A. Correct.

7 Q. When did it become inactive?

8 A. January of 2017.

9 Q. And is that when you sold Coal
10 Mountain Mine?

11 A. Correct. I believe the date was
12 January 27th.

13 Q. To whom did Dynamic Energy Inc., sell
14 Coal Mountain?

15 A. It was a group called [REDACTED]
16 [REDACTED].

17 Q. Is that a Justice-related entity?

18 A. No. [REDACTED] formed
19 some special-purpose entities for the purpose of
20 the acquisition. I believe their name was [REDACTED]
21 [REDACTED] I'm assuming for Coal Mountain, but I
22 can't recall their entity's names specifically.
23 I know the parent group was called [REDACTED]
24 [REDACTED].

25 Q. Do you recall the sale price?

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1 A. There were a couple different
2 components to the sale price. There was a
3 preparation plant that was not owned by Dynamic
4 Energy. It was owned by National Resources.
5 Its component of the sales price was [REDACTED]
6 [REDACTED]

7 Q. Is that a Justice-related entity?

8 A. It's on Page 2 of Exhibit 502.

9 MR. ROBECK: So, Steve, is the
10 amount confidential, or is the sales price
11 confidential?

12 MR. BOLLIN: We can mark it attorneys'
13 eyes only.

14 THE WITNESS: I mean, the agreement
15 definitely has a confidentiality provision, if
16 we can do that. That's a fair point.

17 BY MR. BOLLIN:

18 Q. Okay. So I'm sorry, the prep plant
19 was an asset of National Resources, Inc.?

20 A. Correct.

21 Q. And that sold for [REDACTED]?

22 A. Correct.

23 Q. Okay.

24 A. The surface mine permits and leases,
25 and there was some owned property, as well, it

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1 was owned by Dynamic Energy, the purchase price
2 -- I could be off slightly on this, but it was
3 in the neighborhood of [REDACTED].

4 Q. And then how did you wind up the
5 Dynamic Energy, Inc., entity?

6 A. It really doesn't have any -- it has
7 a couple leases left in its name for coal seams
8 that weren't acquired by [REDACTED]

9 [REDACTED] but -- it's still out there because
10 it's a lessee, but it has no operational
11 activity.

12 Q. Where did the proceeds of the sale go?

13 A. Most of it went to Carter Bank &
14 Trust, who has a loan facility with Bluestone
15 Resources. And then as part of our 2015
16 transaction with [REDACTED] we owe [REDACTED] percent
17 of the purchase price to them, so they received
18 [REDACTED] percent of the proceeds.

19 Q. I'm sorry. Who's the them?

20 A. [REDACTED]

21 Q. Who owed [REDACTED] money?

22 A. Bluestone Resources.

23 Their agreement has a provision that,
24 if you sell one of the assets or companies that
25 you acquired from that -- that we acquired from

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1 them in 2015, if that sale occurs in the first
2 five years, you owe them [REDACTED] percent of the
3 sale price.

4 It goes down between years 5
5 and 10. I don't remember what it drops to.
6 But, obviously, this was within the first five
7 years so the [REDACTED] percent applied.

8 Q. Okay. You said that Bluestone
9 Resources had a credit facility with Carter
10 Bank?

11 A. Correct.

12 Q. Okay. And the sale of Dynamic Energy,
13 Inc.'s, Bluestone -- I'm sorry. And the sale
14 of Dynamic Energy, Inc.'s, Coal Mountain Mine
15 resulted in proceeds that went to Bluestone
16 Resources, Inc.?

17 A. To get the blanket lien released that
18 Carter Bank had filed, to get a partial release
19 of that, obviously, some proceeds had to go to
20 them. The facility was larger than the amount
21 that went to them, so it was a partial release.

22 There were some other things. When
23 we reacquired Bluestone in 2015, [REDACTED] had
24 incurred close to \$ [REDACTED] of tax liabilities
25 with the State of West Virginia, and to transfer

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1 clean title [REDACTED], there
2 were about \$ [REDACTED] in taxes that had to be
3 paid. The other 11 did not relate,
4 specifically, to dynamic.

5 Q. All right. I'm going to back up just
6 a second, and I'll probably ask a couple
7 questions I asked previously, because I've
8 forgotten the answers, so I apologize, --

9 A. Okay.

10 Q. -- but most of them will be new.

11 A. Okay.

12 Q. So the owner of James C. Justice
13 Companies, Inc., is James C. Justice, II, and
14 James C. Justice, III?

15 A. And Jillian Justice, for James C.
16 Justice Companies, Inc.

17 Q. Okay. Do they have any subsidiaries?

18 A. Yes.

19 Q. What are those subsidiaries?

20 A. Justice Family Farms LLC, that you
21 asked before about earlier; Southeast Cotton,
22 Inc.; Wilcox Industries, Inc. I feel like I'm
23 missing one. I'm happy to supplement this
24 answer when I can look, but I think that's --

25 Q. If you think of one later, let me

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1 know.

2 A. Yeah. I think that's it, but maybe a
3 plus one.

4 Q. Who are the directors of Southeast
5 Cotton, Inc., and Wilcox Industries, Inc.?

6 A. What timeframe?

7 Q. 2016.

8 A. James C. Justice, II, and James C.
9 Justice, III.

10 Q. And then that changed in 2017?

11 A. Correct.

12 Q. And who became the officers -- I'm
13 sorry, the directors in 2017?

14 A. James C. Justice, III, and Jillian
15 Justice.

16 Q. And who were the officers of SE
17 Cotton, Inc., and Wilcox Industries, Inc., in
18 2016?

19 A. James C. Justice, II, was president.
20 James C. Justice, III, was vice president. I
21 was secretary. James T. Miller treasurer.

22 Q. And that was for both entities?

23 A. Correct.

24 Q. Were those entities also headquartered
25 at the same address in Virginia as all the other

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1 entities we've discussed here today?

2 A. Yes.

3 Q. I think earlier you already indicated
4 that the members of the Justice Family Farms LLC
5 were Jay and Jillian Justice; is that right?

6 A. If I said that I misspoke.

7 Q. I may have misinterpreted.

8 A. Because it's a wholly owned subsidiary
9 of James C. Justice Companies.

10 If I said that, --

11 Q. You may not have.

12 A. -- let's clear it up.

13 They are the managers of Justice
14 Family Farms.

15 Q. Okay. Thank you.

16 And the member is James C. Justice
17 Companies, Inc.?

18 A. Correct.

19 Q. And that's also headquartered in the
20 same location as all the other entities we've
21 discussed today?

22 A. Yes.

23 Q. And it has the same employees?

24 A. It has no --

25 Q. The same --

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1 A. It has no employees, technically, --

2 Q. Okay.

3 A. -- but to the extent it has an annual
4 filing or something like that that needs done,
5 it would be done by the -- what we've been -- or
6 what I've been referring to as professional and
7 administrative staff of Bluestone Industries.

8 Q. Up until January of 2017, who were the
9 directors of Tams Management, Inc.?

10 A. James C. Justice, II, and James C.
11 Justice, III.

12 Q. Who were the officers?

13 A. James C. Justice, II, was president.
14 James C. Justice, III, executive vice president.
15 I was secretary. James T. Miller treasurer.

16 Q. Up until January of 2017 -- well,
17 strike that.

18 After January of 2017, were -- I was
19 going to try to name it for you, but I'm just
20 going to let you do it. Strike that.

21 After January 2017, who were the
22 directors and officers of Tams Management, Inc.?

23 A. Directors were James C. Justice, III,
24 and Jillian Justice. The officers were James
25 C. Justice, III, president; myself as vice

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1 president., James T. Miller as secretary and
2 treasurer.

3 Q. Bluestone Energy Sales Corporation,
4 who were the directors up 'til January 2017?

5 A. James C. Justice, II, and James C.
6 Justice, III.

7 Q. And during the same time period, who
8 were the officers?

9 A. James C. Justice, II, president; James
10 C. Justice, III, executive vice president. I
11 was secretary. James T. Miller as treasurer.

12 Q. And who were the directors and
13 officers of Bluestone Energy Sales Corporation
14 after January of 2017?

15 A. The directors are James C. Justice,
16 III, and Jillian Justice. The officers are
17 James C. Justice, III, as president. I'm the
18 vice president, and James T. Miller is secretary
19 and treasurer.

20 Q. For A&G Coal Corporation, who
21 were the directors prior to January of 2017?

22 A. James C. Justice, II, and James C.
23 Justice, III.

24 Q. And who are the officers?

25 A. James C. Justice, II, is -- or was

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1 president, James C. Justice, III, executive
2 vice president. I was secretary and Terry -- or
3 James T. Miller was treasurer.

4 Q. And who were the directors and
5 officers of the A&G Coal Corporation after
6 January of 2017?

7 A. The directors are James C. Justice,
8 III, and Jillian Justice. The officers are
9 James C. Justice, III, president. I'm the vice
10 president. James T. Miller is secretary and
11 treasurer.

12 Q. Who were the managers of Justice
13 Family Farms LLC prior to January of 2017?

14 A. James C. Justice, II, and James C.
15 Justice, III.

16 Q. In 2016, what was the business of
17 Southern Coal Sales Corporation?

18 A. In 2016, Southern Coal Sales
19 Corporation had, basically, been wound down.
20 It was the primary sales company for Southern
21 Coal Corporation in 2015, and some other Justice
22 entities in 2015. In 2016, Bluestone Energy
23 Sales Corporation had become the primary
24 sales company, and so other than some existing
25 relationships, one being Algoma Southern Coal

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1 Sales Corporation, it was winding down.

2 Q. What do you mean by winding down?

3 A. Any new relationships were going
4 through Bluestone Energy Sales Corporation.
5 So other than maintaining and administering
6 existing and ongoing relationships that Southern
7 Coal Sales had, it was not taking on any new
8 business.

9 Q. Why?

10 A. It was predominantly finance-driven.
11 Carter Bank & Trust was the primary lender for
12 all Justice organizations. To take on the
13 Algoma contract with the coal being sold on
14 consignment, that was a heavy liquidity drain
15 on the Southern Coal Sales and Southern Coal
16 entities. And so we approached Carter Bank for
17 a credit facility. Southern Coal Corporation
18 had already either reached or exceeded its
19 lending limitation at the bank. That was a
20 bank requirement, not ours. Whatever their FDIC
21 lending limits were, Southern Coal Corporation
22 had basically been tapped out. So they advised
23 us they were willing to do a credit facility for
24 coal receivables, but it would have to be a new
25 entity and it would have to be a standalone

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1 entity. And that's when we formed Bluestone
2 Energy Sales in November of 2015 for that
3 purpose.

4 Q. So that's when the original agreement
5 was signed with Essar Algoma, correct, November
6 of '15?

7 A. Yes.

8 Q. Okay. So the Bluestone Energy Sales
9 entity was created, specifically, so that one
10 of the Justice entities could get the credit
11 required to go through with the Algoma deal?

12 A. That was the primary driver, and then
13 it, obviously, financed all receivables -- coal
14 sales receivables, in general. But that was the
15 driver, was to create liquidity to be able to do
16 the Algoma contract.

17 Q. All right. Does -- Bluestone Energy
18 Sales Corporation, who owns it?

19 A. James C. Justice, II.

20 Q. Is Bluestone Energy Sales Corporation
21 existing today?

22 A. It's not operational today. I do
23 believe the entity still exists.

24 Q. When did it become non-operational?

25 A. I believe it -- I believe in 20 -- it

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1 may have been 2018. Late 2017, early 2018,
2 we closed out the facility with Carter Bank &
3 Trust, and once that facility was closed we
4 no longer used it.

5 Q. So tell me, why did Southern Coal
6 Sales Corporation enter into the agreement
7 with Algoma rather than Bluestone Energy Sales
8 Corporation?

9 A. Southern Coal Sales Corporation had
10 an existing relationship with Algoma. And the
11 Carter Bank & Trust issue was not anticipated.
12 We didn't realize that that was the only way
13 they could loan us money. And so, at the time,
14 Southern Coal Sales Corporation was the primary
15 and only sales company being utilized by the
16 Justice organization for coal sales.

17 Q. Okay. And I'm trying to understand
18 something you referred to, the Justice
19 organization and the only way Carter Bank
20 could loan us money, --

21 A. Okay.

22 Q. -- I'm trying to figure out who the
23 us is and who the Justice organization is.

24 A. Okay. So the -- I'm, probably,
25 just painting with too broad of a brush, but the

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1 Justice organization, generally, would be the
2 coal companies that we've been discussing today,
3 that those were the companies that had coal
4 sales either through Southern Coal Corporation
5 or the Bluestone Resources entities. You also
6 had Tams Management, Inc. You also had A&G Coal
7 Corporation, Kentucky Fuel Corporation. Any of
8 those coal companies that are owned by the
9 Justice Family, their coal would have been
10 marketed through Southern Coal Sales
11 Corporation.

12 Q. Okay.

13 A. So that's who I was referring to when
14 I said that.

15 Q. Okay.

16 A. In the other context of your question,
17 the us in that question would be Southern Coal
18 Corporation. Southern Coal -- in -- Southern
19 Coal Corporation approached Carter Bank for the
20 additional credit on coal sales receivables,
21 and Carter Bank said they would be happy to do
22 a credit line, but they could not do it with
23 Southern Coal Corporation, or any of its
24 subsidiaries, due to their lending limits.

25 Q. Okay. And so you created the new

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1 entity, Bluestone Energy Sales Corporation, so
2 that it could take out the credit from Carter
3 Bank and move forward with the Algoma
4 transaction?

5 A. Correct.

6 Q. What assets -- well, no, that's not a
7 good -- strike that.

8 What was Southern Coal Sales
9 Corporation bringing to the table in the Algoma
10 agreement?

11 MS. BYROADE: Objection to form.

12 BY MR. BOLLIN:

13 Q. Okay. I'll ask that a little more
14 formally.

15 A. Okay.

16 Q. What is it that Southern Coal Sales
17 Corporation had or did in relation to the Algoma
18 agreement?

19 A. They supplied the coal that Algoma
20 purchased under the contract.

21 Q. How did they supply it?

22 A. By working with the various
23 operations, A&G Coal Corporation being one,
24 Dynamic Energy Surface Mine being one, Tams
25 Surface Mine being the third, they acquired coal

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1 from those operations and, in turn, supplied it
2 to Algoma. And in 2015, during the month of
3 December -- November and December, they also
4 acquired some third-party coal from third-party
5 producers and supplied it to Algoma.

6 Q. Okay. So Southern Coal Sales
7 Corporation didn't own any coal, right?

8 A. It doesn't own coal reserves, and it
9 does not operate coal mines.

10 Q. Okay. It doesn't produce coal?

11 A. No.

12 Q. It acquires and transfers coal?

13 A. Acquires and resells.

14 Q. Okay. Were there agreements between
15 Southern Coal Sales Corporation and these three
16 entities, A&G, Dynamic, Tams?

17 A. No.

18 Q. So --

19 A. No written agreements.

20 Q. Okay. Were there even unwritten
21 agreements?

22 A. Well, given the last hour, --

23 Q. Yeah.

24 A. -- you know, I mean, you have common
25 people on each side of that transaction. So,

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1 obviously, there was an understanding that when
2 a certain amount and quality of coal was agreed
3 upon to be delivered to Algoma, those same
4 people had an understanding on whether or not
5 these three operations could produce that coal.

6 Q. Okay. So rather than an agreement,
7 there was an understanding among the Justice
8 Coal Companies that they would supply enough
9 coal of the right quality to Algoma to satisfy
10 the obligations under the agreement between SCSC
11 and Algoma?

12 A. Yes.

13 Q. And that explicitly did include
14 Bluestone -- let me say the name again -- that
15 understanding did include Bluestone Energy Sales
16 Corporation, right?

17 A. I don't understand the question.

18 Q. Sure.

19 I mean, Southern Coal Sales
20 Corporation was getting its coal from the three
21 Justice coal companies, right?

22 A. Three Justice family-owned, either
23 directly or indirectly, operations.

24 Q. Okay. And it was getting the
25 financing to go through with the deal with

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1 Algoma from Bluestone Energy Sales Corporation?

2 A. Yeah. Some of the money would have
3 been used, ideally, to pay for trains, I know
4 that's been an issue here, and to produce coal
5 that was later sold to Algoma.

6 That was somewhat complicated by the
7 fact that the Algoma contract was never formally
8 transferred to Bluestone Energy Sales, because
9 it created an issue where Carter Bank couldn't,
10 in turn, get a lien on the Algoma receivable,
11 so it was somewhat complicated. We attempted
12 to have the contract assigned, but what was
13 conveyed to me by Steve Sears is, due to the
14 bankruptcy complication with Algoma, there could
15 be problems getting an assignment ratified in
16 the bankruptcy proceeding, and so the contract
17 stayed in Southern Coal Sales' name.

18 Q. So perhaps you can explain to
19 me how it works, or how it worked in 2016.
20 There's an agreement between Southern Coal Sales
21 Corporation and Algoma, signed in April of 2016,
22 an amending agreement. You're familiar with
23 that?

24 A. Yes.

25 Q. Okay. There's a request for a

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1 shipment of coal. How would Southern Coal Sales
2 Corporation fund, for example, the acquisition
3 of trains to provide service to provide the
4 delivery of coal to the port?

5 A. So going back to the beginning, --

6 Q. Yeah.

7 A. -- in a perfect world, we would have
8 been able to have gotten that money from Carter
9 Bank, but because the Algoma contract was never
10 assigned and Carter Bank did not have a lien on
11 Algoma receivables back to Southern Coal Sales,
12 that didn't quite work out like we had
13 originally anticipated. So those trains would
14 be funded either through money from Southern
15 Coal Corporation or, possibly, another
16 Justice-owned entity through a loan.

17 There had been instances over the
18 years where we have, basically, had brokers
19 factor a coal shipment for us, where they'll
20 prepay the transportation -- I don't remember
21 that happening on Algoma, but a broker, for
22 example, will prepay your transportation costs,
23 and then they get a certain percent of the sales
24 price in return for doing that.

25 So there's different ways of doing

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1 that, but, I think, typically, with Algoma we
2 were funding it within either Southern Coal
3 Corporation or a loan from another Justice-owned
4 entity.

5 Q. Okay. I mean, Southern Coal Sales
6 Corporation didn't really have its own money,
7 right?

8 MR. ROBECK: Objection; form.

11 BY MR. BOLLIN:

12 Q. Okay.

13 A. -- but sometimes the timing of
14 receivables coming in and trains being scheduled
15 would not match up exactly. So if you needed
16 to schedule a train but you hadn't received a
17 receivable recently, there would be a cash need.

18 Q. Okay. And when there was a cash need,
19 that was funded by Southern Coal Corporation or
20 Bluestone Energy Sales Corporation?

21 A. Or it's possible even a separate
22 Justice-owned entity. It's not uncommon for
23 us to do intercompany loans when there's a cash
24 need like that.

Q. Okay. Are those formal loans? Are

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1 those documented?

2 A. They're documented in our accounting
3 records. Each company records a receivable to
4 -- or a payable to and a receivable from, and
5 then those are reconciled throughout the year.

6 Q. Okay. So there's no other formal loan
7 documents?

8 A. Not in a traditional sense, like a
9 promissory note or anything like that. Nothing
10 like that.

11 MR. BOLLIN: Can we take a
12 three-minute break?

13 MS. BYROADE: Yeah.

14 MR. ROBECK: Sure.

15 (Recess taken.)

16 BY MR. BOLLIN:

17 Q. So just before the break you had
18 testified that you have accounting records that
19 show transfer of money of loans among Justice
20 entities; is that right?

21 A. Yes.

22 Q. Okay. What are those records?

23 A. So it would be journal entries that
24 relate to the balance sheet for each specific
25 entity. If it's within a parent subsidiary

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1 context, it would be referred to as an
2 intercompany payable or intercompany receivable.
3 If it's a Justice-owned entity but it's outside
4 of the parent subsidiary context, it would be
5 referred to as a related party payable or a
6 related party receivable. And then there's a
7 third separate one for shareholder loans.

8 Q. Who keeps those records?

9 A. It has varied over time, but whoever
10 the accountant is for each particular entity.

11 Q. Okay. Is there a master ledger where
12 all of this is kept?

13 A. It would be on each party's books.
14 So it would be on the general ledger of each
15 party's books, which all of our accounting is
16 run through an accounting software called MAS,
17 M-A-S, MAS 200. It's a Sage product. So it
18 would all be included within that company's
19 books on that accounting system.

20 Q. Okay. And these accounts are all
21 maintained at the headquarters -- the common
22 headquarters?

23 A. All accounting is at the headquarters,
24 yes.

25 Q. And it's all the same shared personnel

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1 who are doing the accounting for all the various
2 Justice entities?

3 A. Typically.

4 Q. Okay.

5 A. I mean, there have been instances over
6 the years -- well, I think during this timeframe
7 that would be.

8 Q. And who runs that part of the
9 business?

10 A. The accounting department, it has
11 -- we refer to each one of our accountants
12 that is responsible for a particular group of
13 companies as a senior controller. Like, today
14 the senior controller for the Bluestone Group of
15 companies is Amanda Boggs. She's a CPA.
16 She has 30 years' experience. During this
17 timeframe, she was doing Southern Coal
18 Corporation. She was the senior controller
19 for Southern Coal. And during '15, '16 and
20 '17, the senior controller for Bluestone was a
21 gentleman by the name of Aaron Smith. He no
22 longer works for the company.

23 Q. And who did they report to?

24 A. They reported to Summer Harrison,
25 typically. They also will sometimes report

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1 directly to me, although, organizationally
2 speaking, they typically directly report to
3 Summer.

4 Q. Do you know if these records that
5 you've been speaking of have been produced in
6 this litigation?

7 A. As it relates to Southern Coal Sales
8 Corporation, it shows up as a line item on their
9 balance sheet. It would also show up as a line
10 item on the balance sheet of Southern Coal
11 Corporation. To my knowledge, none of the
12 books for other Justice-owned entities have been
13 disclosed.

14 Q. Have the books related to transfers
15 and loans from other Justice entities to
16 Southern Coal Sales Corporation been produced?

17 A. It's included on the balance sheet of
18 Southern Coal Corporation. The actual entries
19 themselves, I don't think that the -- I think
20 that would be part of the general ledger, and,
21 to my knowledge, the general ledger has not been
22 disclosed. It was just the balance sheet and
23 the income statement.

24 Q. Is there any way --

25 MR. ROBECK: Nor do I think it was

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1 requested.

2 MR. BOLLIN: Well, we can disagree
3 about that.

4 BY MR. BOLLIN:

5 Q. Is there any way to determine what
6 specific loans were made to or from Southern
7 Coal Corporation from other Justice entities,
8 other than looking at the general ledger?

9 A. No. That's where you would go to
10 determine that.

11 (Ball Exhibit No. 505, the balance
12 sheet and income statement for Nevada Holdings,
13 Inc., for the year-end 2015, was marked.)

14 BY MR. BOLLIN:

15 Q. I'm handing to you what's been marked
16 as Exhibit 505. Do you recognize it?

17 A. Yes. It's the balance sheet and
18 income statement for Nevada Holdings, Inc., for
19 the year-end 2015.

20 Q. Okay. A moment ago we were talking
21 about moneys received by Southern Coal Sales
22 Corporation -- well, first, Nevada Holdings,
23 Inc., that's the same thing as Southern Coal
24 Sales Corporation?

25 A. Correct.

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1 Q. In December of 2015, it was not yet
2 known as Nevada Holdings, Inc., correct?

3 A. That's correct.

4 Q. Do you know when this consolidated
5 balance sheet was created?

6 A. I don't.

7 Q. Fair to say that it was created after
8 2015?

9 A. The printout. I mean, the accounting
10 system, once a period has been closed, that
11 period should not change. But all of this is
12 kept electronically now, so it's not like these
13 are kept in the ordinary course in a paper copy.

14 So when they would go to generate
15 this, I'm assuming for this request, the system
16 would recognize whatever entity name had been
17 assigned to it at the time the report was
18 generated. But the numbers would not have
19 changed since whenever these books were closed
20 out, usually, you know, within 120 days of
21 year-end.

22 Q. All right. So let's look at the
23 sheet. This is -- so when this says Nevada
24 Holdings, Inc., consolidated balance statement,
25 it is -- we're talking about Southern Coal Sales

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1 corporation, right?

2 A. Correct.

3 MR. ROBECK: Asked and answered.

4 BY MR. BOLLIN:

5 Q. Where in Exhibit 505 are the loans
6 that you were referenced from other Justice coal
7 entities or Justice entities?

8 A. So it's in two spots. On the
9 first page, under other assets, you see I/C
10 receivables. That stands for intercompany
11 receivable. Here it's a negative, so
12 technically it's a payable.

13 Q. So that's money owned by SCSC?

14 A. Correct.

15 Q. Who is it owed to?

16 A. I can't tell from the face of this.

17 And then on the second page,
18 under long-term liabilities, you have loan to
19 shareholders, and then you have I/C payables,
20 which stands for intercompany payables.

21 Q. What is the loan to shareholders?

22 A. That would be money that has been
23 loaned to the entity. In this instance, it
24 would come from Southern Coal Corporation.

25 It could come from the Justice family through

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1 Southern Coal Corporation, but it's to indicate
2 that it came from the shareholder instead of a
3 subsidiary or a related party.

4 Q. So the [REDACTED] of long-term
5 liability on Page 2 of Exhibit 505 is a loan
6 from Southern Coal Corporation?

7 MR. ROBECK: Say that one more time.

8 MR. BOLLIN: Can you read it back?

9 (Referred-to testimony read back.)

21 BY MR. BOLLIN:

Q. Okay. Why is that?

23 A. It's just cleaner accounting-wise,
24 from what I'm told, I'm not an accountant, but
25 it's cleaner to keep the shareholder loans

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1 with the direct shareholder, not the indirect
2 shareholders. So it's for an efficiency purpose
3 from an accounting standpoint.

4 Q. Okay. So whether it's pass-through
5 or directly, the [REDACTED] set forth on Page 2
6 of Exhibit 505 comes from the Justice family?

7 MR. ROBECK: Objection.

8 Mischaracterizes what he testified to.

9 THE WITNESS: If it comes from
10 Southern Coal Corporation, it would not
11 necessarily have to come from the Justice
12 family. It more than likely would. But if
13 Southern Coal Corporation otherwise had cash
14 available and Southern Coal Sales Corporation
15 needed it, it could loan its own cash.

16 BY MR. BOLLIN:

17 Q. Okay. So if it came -- if the \$[REDACTED]
18 [REDACTED] loan set forth on Page 2 of Exhibit 505
19 came from Southern Coal Corporation, it could be
20 Justice family money, or it could come from
21 Southern Coal's own coffers or it could come
22 from some third party?

23 A. Through -- yeah. The -- yes. But it
24 would come through southern coal.

25 Q. Okay. And how could we find out the

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1 answer to that question? Who was funding the [REDACTED]
2 [REDACTED]?

3 A. There would be detail. Similar
4 to what we described on these intercompany
5 transactions, the loan to shareholder would have
6 a similar entry. So when Southern Coal Sales
7 received that money, there would be an entry
8 describing whether it came directly from
9 Southern Coal Corporation or from the Justice
10 family shareholders.

11 If it came from Southern Coal
12 Corporation, if you wanted to then determine
13 whether they had received that money from some
14 other entity, then you would look at their books
15 for a corresponding entry to see if they had
16 received a similar amount on that same day.

17 Q. So that would be in the Southern Coal
18 Corporation ledger?

19 A. Yes.

20 Q. Did you review that ledger in
21 preparation for your deposition today?

22 A. No.

23 Q. Is that something you have access to?

24 A. I could see it. I don't have -- I
25 don't have unfettered access to it, but if I

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1 asked to see it, I could see it.

2 Q. Earlier you were talking about the
3 -- that the money for the loan, the [REDACTED],
4 could come from the Justice family, right?

5 A. Correct.

6 Q. Who do you mean?

7 A. Either --

8 Q. Who's the Justice family?

9 A. The shareholders of Southern Coal
10 Corporation are James C. Justice, II, James C.
11 Justice, III, and Jillian Justice, and over time
12 all three of them have loaned money to Southern
13 Coal Corporation.

14 Q. Going back to the first page of
15 Exhibit 505, what were Southern Coal Sales
16 Corporation's fixed assets at the time this
17 document was created in 2015?

18 A. There are [REDACTED].

19 Q. How could we determine to whom the
20 intercompany receivable of [REDACTED] -- strike
21 that.

22 Is that \$[REDACTED]?

23 A. Yes.

24 Q. Okay. How could we determine who that
25 was owed to?

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1 A. Again, on the accounting records
2 that underpin this report, there would be
3 entries that record that, and that's how it,
4 ultimately, shows up on the balance sheet.

5 Q. Okay. Do you have access to those?

6 A. I mean, they're part of the accounting
7 system.

8 Q. So you do?

9 A. Yeah. I mean, it's the same as --

10 Q. Okay.

11 A. This is just a report that the
12 accounting system is designed to generate, but
13 all of the information that underpins this
14 report is in that system.

15 Q. Okay. Did you review the information
16 in that system in preparation for your
17 deposition here today?

18 A. No.

19 Q. Why not?

20 A. I don't have access to the accounting
21 system directly.

22 Q. So you have to ask for it?

23 A. Yeah.

24 Q. And if you asked for it, you'd be
25 given it?

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1 A. Yeah. If I asked for a specific
2 report, they would generate it for me.

3 Q. And beyond that, if you wanted to
4 see who was making loans -- intercompany loans
5 to Southern Coal Sales Corporation, you could
6 find out, right?

7 A. I could see who the loans had been
8 made to or from, yes.

9 Q. You were characterizing them as loans.
10 Do you know if they were paid back?

A. Typically, they are.

12 Q. We would have to look at a particular
13 loan in order to determine whether it was paid
14 back?

15 A. Yeah, I mean, you would look at the
16 same account over -- at different time periods
17 to see what the activity was, but, typically, we
18 do expect for those to be paid back.

19 (Ball Exhibit No. 506, the balance
20 sheet and income statement for Nevada Holdings,
21 Inc., for 2016, was marked.)

22 BY MR. BOLLIN:

23 Q. You've been handed Exhibit 506. Do
24 you recognize the exhibit?

A. It's the balance sheet and income

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1 statement for Nevada Holdings, Inc., for 2016.

2 Q. And, again, this is the same entity as
3 Southern Coal Sales Corporation?

4 A. Correct.

5 Q. And this is the year-end statement,
6 correct?

7 A. It is. Correct.

8 Q. What are the intercompany receivables
9 as of that date, December 31st, 2016?

10 A. [REDACTED].

11 Q. What are the prepaid expenses?

12 A. [REDACTED].

13 Q. And what are those prepaid expenses?

14 A. I believe those relate to a throughput
15 and transloading agreement that Southern Coal
16 Sales had with [REDACTED] for port
17 space in Newport News. It had -- that agreement
18 required for a monthly minimum payment of [REDACTED]
19 [REDACTED] dollars.

20 Q. And Southern Coal Sales Corporation
21 had prepaid 11 months?

22 A. Yes.

23 Q. Did Southern Coal Sales Corporation
24 have an agreement with [REDACTED]

25 A. There is an agreement with [REDACTED].

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1 I can't recall off the top of my head if it's
2 Southern Coal Corporation or if it's Southern
3 Coal Sales Corporation.

4 Q. Well, you told me that Southern Coal
5 Sales Corporation was winding down in 2016 and
6 that all new business went to other entities and
7 not to Southern Coal Sales Corporation, right?

8 A. Yeah. And I believe this is just a
9 carryover from the prior year. I don't think
10 the port space had been used, and I think in the
11 prior year there was also a prepaid expense of a
12 similar amount, and so I think this is just a
13 carryover.

14 Q. Okay. Looking at Exhibit --

15 MR. ROBECK: They're not selling coal
16 either. This is not a sale of coal.

17 MR. BOLLIN: Right.

18 MR. ROBECK: Okay.

19 BY MR. BOLLIN:

20 Q. -- Exhibit 505, it has prepaid
21 expenses in 2015 of \$ [REDACTED]; is that right?

22 A. Correct.

23 Q. So sometime prior to the end of 2015
24 Southern Coal Sales Corporation had prepaid
25 expenses of \$ [REDACTED] to [REDACTED]?

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1 A. Correct.

2 Q. And by the end of 2016 it was down to

3 [REDACTED]?

4 A. Yes.

5 Q. Do you know if payments were made to

6 [REDACTED] during 2016?

7 A. I don't recall when that agreement
8 ended.

9 Q. Do you recall whether the agreement
10 with [REDACTED] was a Southern Coal Sales
11 Corporation agreement?

12 A. I don't. Like I said, I believe it
13 was either Southern Coal Corporation or Southern
14 Coal Sales. I believe it started in 2013.

15 Q. Okay.

16 A. And I don't recall when it ended, off
17 the top of my head.

18 Q. Looking at the second page of the
19 Exhibit 506, what were the long-term liabilities
20 as of that date?

21 A. [REDACTED]

22 Q. And how much of that was loans from
23 shareholders?

24 A. [REDACTED]

25 Q. If I'm not mistaken, I think you just

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1 gave me the number for the intercompany
2 payables, didn't you?

3 A. I'm sorry. What was your question?
4 I may have read the wrong number.

5 Q. No. That's fine. That's why I'm
6 asking.

7 A. Yeah. No.

8 Q. What were the loans to shareholders?

9 A. I'm sorry. I read the wrong number.

10 Q. Yeah.

11 A. It's \$ [REDACTED] -- \$ [REDACTED] in the
12 negative.

13 Q. What does that mean?

14 A. That would appear -- a negative on
15 this side would indicate a receivable. We've
16 never paid back loans to shareholders, so I
17 think this has to be when something was booked
18 in the form of a shareholder loan, or what have
19 you, there had to be a typo from a numbers
20 standpoint. Because we wouldn't have a
21 receivable on this side. I mean, there wouldn't
22 be a dividend. We wouldn't pay a div -- that,
23 technically, would indicate there's a dividend
24 owed, --

25 Q. Mm-hmm.

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1 A. -- and we wouldn't have that.

2 Q. Okay. So --

3 A. And I misspoke. Can I clarify
4 something?

5 Q. Sure.

6 A. We do repay shareholder loans.

7 Q. Okay.

8 A. We do not make dividends. And this
9 negative number here would indicate that it
10 would be a dividend upcoming. You haven't made
11 it yet, but it's recorded, so that tells me
12 that's a mistake.

13 Q. Okay. And in any case, the \$ [REDACTED]
14 [REDACTED] loan to Southern Coal Sales Corporation
15 in 2015 has been paid back by the end of 2016?

16 A. Yes.

17 Q. If we wanted to find out what the
18 balance was there -- you're saying it's not
19 negative [REDACTED]. If we're trying to figure out
20 what the real balance is, where would we look?

21 A. You would look at the ledger recording
22 all of the shareholder loans and all of the
23 shareholder repayments. There is a chance, and
24 I don't know that this happened, sometimes with
25 subsidiaries -- excuse me. Yeah, it didn't

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1 happen here. Sometimes shareholder loans can be
2 capitalized and converted to equity, and so you
3 could have a loan go away from that standpoint,
4 but you would see the increase in equity, and I
5 don't think that happened here.

6 So you would go to the general ledger
7 to look at the recording of the shareholder
8 loans.

9 Q. What were the intercompany payables at
10 the end of 2016?

11 A. [REDACTED]

12 Q. And to whom did Southern Coal Sales
13 Corporation owe [REDACTED]

14 A. I can't tell from the face of this.

15 Q. Again, to find out, you'd have to look
16 at Southern Coal Sales Corporation's ledger?

17 A. Yes. A summary of their intercompany
18 transactions, which would be generated from the
19 general ledger.

20 Q. It also listed a note payable?

21 A. Yes.

22 Q. What was that?

23 A. I can't tell from the face of this.

24 Q. Where would we have to look to figure
25 that out?

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1 A. The general ledger.

2 (Ball Exhibit No. 507, the balance
3 sheet and income statement for Nevada Holdings,
4 Inc., for the year ended 12/31/2017, was
5 marked.)

6 BY MR. BOLLIN:

7 Q. I've handed you what's been marked as
8 Exhibit 507. Can you identify the document?

9 A. This is the balance sheet and income
10 statement for Nevada Holdings, Inc., for the
11 year ended 12/31/2017.

12 Q. Turning to the second page, first of
13 all, the accounts payable has changed from 2016.
14 In 2016 it was [REDACTED] and now it's
15 [REDACTED]; is that right?

16 A. That's correct, yes.

17 Q. Was Southern Coal Sales Corporation
18 doing business in 2017?

19 A. No.

20 Q. Do you know where the \$[REDACTED] was
21 paid out to?

22 A. Are you asking me who paid the
23 accounts payable?

24 Q. No.

25 A. Just so I understand the question.

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1 Sorry.

2 Q. I'm wondering who was paid with the
3 \$ [REDACTED] difference between 2016 and 2017?

4 A. It would be various vendors, I'm sure.

5 Q. Do you know what for?

6 A. Not specifically, no.

7 MR. ROBECK: Maybe legal services by
8 that point.

9 BY MR. BOLLIN:

10 Q. Could any of the vendors be other
11 Southern Coal -- I'm sorry, other Justice
12 entities?

13 A. No.

14 Q. And how do you know that?

15 A. I can't think of any instance where
16 we bill one of our own entities as an account
17 payable.

18 Q. Okay. The loan to shareholders is
19 still negative, right?

20 A. Correct.

21 Q. And you think that's a mistake?

22 A. I do. I mean, it's nominal, but I do.

23 Q. The amount owed to intercompany loans
24 has increased from 2016 by almost \$ [REDACTED]; is
25 that right?

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1 A. Yes.

2 Q. Again, Nevada Holdings, Inc., wasn't
3 doing business in 2017, was it?

4 A. It was not doing any active coal
5 sales, no.

6 Q. How did it incur [REDACTED] more in
7 intercompany loans in 2017?

8 A. I think it's logical to think that [REDACTED]
9 [REDACTED] of that went to pay bills that
10 are no longer on the balance sheet. The other
11 [REDACTED], I can't tell just by looking at the
12 balance sheet what it would have been used for.

13 There's a -- you know, there's
14 a \$ [REDACTED] general expense on the income
15 statement. I can't tell what that is from
16 the face of the document.

17 Q. If you wanted to determine what that
18 \$ [REDACTED] expense was, where would we look?

19 A. It's [REDACTED] --

20 Q. I'm sorry.

21 A. -- but we would look at the detail in
22 the general ledger.

23 Q. And, again, you didn't review the
24 general ledger prior to your deposition today?

25 A. No.

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(Ball Exhibit No. 508, the balance sheet and income statement for June 30th, 2018, for Nevada Holdings, Inc., was marked.)

BY MR. BOLLIN:

Q. Could you identify Exhibit 508 for the record, please?

A. It is the balance sheet and income statement for June 30th, 2018, for Nevada Holdings, Inc.

Q. All right. Change of topic real quick. I have a follow-up question.

From Exhibit 502, --

A. Yes.

Q. -- the entities listed on the first page, Southern Coal Corporation entities, are any of those still active?

A. None of these companies have active operations.

Q. And that includes Southern Coal Corporation?

A. Southern Coal Corporation never operated. It only had operations through its subsidiaries, but it was never an operating company itself.

Q. Who employed the employees who worked

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1 for Southern Coal Corporation? Where did they
2 get their paychecks?

3 A. During what time period?

4 Q. 2016.

5 A. During 2016, none of these companies
6 would have been operating, and so the corporate
7 overhead -- I mean, the answer to your question
8 is, I don't know, specifically. But it would
9 have been Blue -- either Bluestone Industries,
10 who was operating, or it's possible A&G Coal,
11 who was operating during that time period, they
12 could have been employed by them.

13 Q. Okay.

14 A. But it would not have been by any of
15 these entities.

16 Q. Okay. So folks who are doing work for
17 Southern Coal Sales Corporation in 2016, do we
18 know who paid them?

19 A. There really would only be -- you have
20 a salesperson, Steve Sarver, and then whatever
21 legal accounting support they needed. And I
22 don't know. Because I had -- you would have
23 Summer Harrison, who would have handled the
24 cash. There really would only be, like, three
25 or four people --

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1 Q. Okay.

2 A. -- for Southern Coal Sales
3 Corporation.

4 Q. So in 2016, the Algoma agreement,
5 that was the biggest deal within the Justice
6 Coal Companies, right?

7 A. I can't say one way or the other.
8 I don't know.

9 Q. All right. I'm just trying to figure
10 out, you've got an agreement signed by Southern
11 Coal Sales Corporation with Algoma, right?

12 A. Correct.

13 Q. And it's being performed by employees
14 of Southern Coal Corporation?

15 A. Well, it's being performed by Southern
16 Coal Sales Corporation.

17 Q. Okay.

18 A. Southern Coal Sales Corporation is the
19 entity delivering the coal to Algoma.

20 Q. Okay. And they're getting their coal
21 from other Justice entities and -- for the 2016
22 agreement, right?

23 A. For 2016, they were receiving it from
24 Dynamic Energy and A&G Coal Corporation.

25 Q. Okay. And when they were interacting

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1 with the railroad and interacting with Algoma,
2 were they acting as Southern Coal Corporation
3 employees? Whose employees were they?

4 A. Well, they were never -- I mean, you
5 can only be an employee -- not trying to give a
6 legal answer, but I think you can only be an
7 employee of whoever pays you. I mean, I think
8 you can represent other people.

9 Q. That's all I'm trying to figure out.

10 A. Southern Coal Sales Corporation has
11 never had employees, --

12 Q. Okay.

13 A. -- so they were never an employee of
14 Southern Coal Sales Corporation.

15 Q. Okay.

16 A. So they would have been representing
17 Southern Coal Sales Corporation. Who they were
18 actually receiving their paycheck from, --

19 Q. You just don't know.

20 A. -- I don't know.

21 Q. In 2016, Jim Justice and Jay Justice
22 and you and Mr. Miller were officers and
23 directors of Southern Coal Sales Corporation,
24 right?

25 A. Yes.

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1 MR. ROBECK: Objection; form.

2 Do you mean all of them were both
3 officers and directors?

4 BY MR. BOLLIN:

5 Q. Okay. So the directors were the
6 Justices, right, Jim and Jay?

7 A. Correct.

8 Q. And the officers were, Jim Justice,
9 Jay Justice, you and Mr. Miller?

10 A. Yes.

11 Q. Were you compensated for those
12 services?

13 A. Not from Southern Coal Sales
14 Corporation.

15 Q. Do you know who you were compensated
16 by?

17 A. Yes.

18 Q. Who were you compensated by?

19 A. Greenbrier Hotel Corporation.

20 Q. So if you're an employee of Greenbrier
21 Hotel Corporation, why are you doing services
22 for Southern Coal Sales Corporation?

23 A. Because I'm a corporate officer.

24 Q. Of Southern Coal Sales Corporation?

25 A. Yes.

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1 Q. I'm sorry. You said Greenbrier Hotel
2 Corporation?

3 A. Yes.

4 Q. Who owns Greenbrier Hotel Corporation?

5 A. Greenbrier Resort and Club Management
6 Company.

7 Q. Resort and Club Management Company?

8 A. Yes.

9 Q. Who owns resort -- Greenbrier Resort
10 and Club Management Company?

11 A. C&O Traveler, Inc.

12 Q. Who owns C&O Traveler, Inc.?

13 A. Justice Family Group, LLC.

14 Q. Who are the members of Justice Family
15 Group, LLC?

16 A. James C. Justice, II, James C.
17 Justice, III, and Jillian Justice.

18 Q. Were they also the managers of the
19 Justice -- I'm sorry. Strike that.

20 Did C&O Traveler, Inc., Resort and
21 Club Management Company -- or is it corporation?

22 A. Which one? I think you combined two.

23 Q. Yeah. Resort and Club Management --

24 A. Greenbrier Resort and Club Management
25 Company, Inc.

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1 Q. Okay.

2 Did Greenbrier Hotel Corporation,
3 Greenbrier Resort and Club Management Company,
4 Inc., C&O Traveler, Inc., all share the same
5 directors?

6 A. No.

7 Q. Just taking a shot.

8 A. Yeah.

9 Q. Who are the directors of C&O Traveler,
10 Inc.?

11 A. I should have asked this. What time
12 frame?

13 Q. 2016.

14 A. James C. Justice, II, and James C.
15 Justice, III.

16 Q. Who are the officers?

17 A. I'd like the chance to clean this up
18 later, if I need to. I'll do the best I can.

19 Q. Tell me what you know.

20 A. I didn't plan on these.

21 MR. ROBECK: No, because it is outside
22 the scope.

23 MR. BOLLIN: I'm just going where he
24 took me.

25 MR. ROBECK: You're now outside the

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1 scope of the deposition. I'm going where he
2 took me does not expand the deposition.

3 MR. BOLLIN: He's an employee and
4 officer --

5 MR. ROBECK: I understand that.

6 MR. BOLLIN: -- of Southern Coal Sales
7 Corporation, who's paid by Greenbrier Hotel
8 Corporation, and you think that's beyond the
9 scope of the deposition, to find out who's
10 paying him?

11 MS. BYROADE: You're well beyond who's
12 paying him.

13 MR. ROBECK: First off, I haven't
14 instructed him not to answer. But it is beyond
15 the scope of the deposition, and he may not know
16 the answer because he didn't prepare for it.

17 MR. BOLLIN: Okay. That's a different
18 issue, and I understand that. Thank you.

19 THE WITNESS: I think the directors
20 were James -- are James C. Justice, II, and
21 James C. Justice, III. The president in 2016
22 was James C. Justice, II. Jay Justice,
23 typically, is not an officer of the Greenbrier
24 entities, so I'm not sure if there is a vice
25 president. And I believe Terry Miller is the

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1 secretary and treasurer.

2 BY MR. BOLLIN:

3 Q. Were you an officer of C&O Traveler
4 Inc.?

5 A. I have been before. I've been
6 secretary.

7 Q. You just don't know about the timing?

8 A. Yeah. Off the top of my head, I can't
9 remember what year I stopped doing that.

10 Q. Okay. You're not the secretary now?

11 A. No.

12 Q. Do you have a role with Greenbrier
13 Resort and Club Management Company, Inc.?

14 A. These companies are just holding
15 companies, just so you know, but, no.

16 Q. Okay. And when you say these
17 companies, which ones are you referring to?

18 A. C&O Traveler -- well, Justice Family
19 Group, C&O Traveler, Inc., and Greenbrier Resort
20 and Club Management Company.

21 Q. Who are the directors of Greenbrier
22 Hotel Corp?

23 A. What time period?

24 Q. 2016.

25 A. James C. Justice, II, Jeff Kemeic, I

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1 think he spells that K-e-m-e-i-c, and James C.
2 Justice, III.

3 Q. Who are the officers?

4 A. In 2016, James C. Justice, II, was
5 still president and CEO, Elmer Coppoolse was the
6 chief operating officer, Elaine Butler was the
7 treasurer, and I was the secretary.

8 Q. Why was Greenbrier Hotel Corporation
9 paying your salary?

10 A. In 2015, the prior COO of the
11 Greenbrier passed away. He was a really good
12 friend of Mr. Justice's, and it was a sudden
13 death. And after his death Mr. Justice asked me
14 to move to the Greenbrier to help fill in some
15 gaps.

16 Q. So while you're receiving your
17 paycheck from Greenbrier Hotel Corporation you
18 continued your role working for all of the other
19 Justice entities that we've described here
20 today?

21 A. Yes.

22 Q. And was your compensation from the
23 Greenbrier Hotel Corporation intended to
24 compensate you for the work you were performing
25 for those other entities?

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1 A. My compensation didn't change, so it
2 was intended to compensate me for the tasks I
3 was asked to do.

4 Q. For all of the companies?

5 A. For all of the companies for which I
6 represented in whatever capacity, whether it was
7 as general counsel, as secretary, whatever that
8 capacity was.

9 Q. In 2016, Jim Justice was the president
10 of Southern Coal Sales Corporation, right?

11 A. Yes.

12 Q. How was he compensated?

13 A. I, honestly, don't know Mr. Justice's
14 compensation structure.

15 Q. Do you know Jay Justice's
16 compensation?

17 A. Not specifically, no.

18 Q. If we wanted to find that out, where
19 would you look?

20 A. Payroll records. I mean, I guess you
21 could ask him for his personal tax return, which
22 would reflect his W2s. I mean, I don't know,
23 but I'm just thinking if I wanted to find
24 someone's compensation, that's where I would
25 look.

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1 Q. Okay.

2 A. But I don't know what his compensation
3 structure is.

4 Q. What about Mr. Miller? Do you know
5 how he was compensated in 2016?

6 A. I believe he was compensated by the
7 Greenbrier similar to what I was. He has served
8 -- he physically works out of the Greenbrier,
9 and he doesn't have any true day-to-day role
10 with the coal companies. He does still serve
11 as treasurer and has some -- obviously, some
12 oversight in that role, but doesn't do anything
13 day to day with the coal companies.

14 (Ball Exhibit No. 509, a summary of
15 all of Southern Coal Sales Corporation's
16 shipments for the years 2015, '16 and '17, was
17 marked.)

18 (Ball Exhibit No. 510, a supplemental
19 spreadsheet to Exhibit 509, was marked.)

20 BY MR. BOLLIN:

21 Q. I'm going to ask you to first look at
22 Exhibit 509. Have you seen this document
23 before?

24 A. Yes.

25 Q. Do you know what this is?

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1 A. I believe it's a summary of all of
2 Southern Coal Sales Corporation's shipments for
3 the years 2015, '16 and '17.

4 Q. And these are to all customers, not
5 just to Algoma?

6 A. It includes other customers, yes.

7 Q. Okay. And who compiled this document?

8 A. I think that Janet Ransom, who
9 works in the Roanoke office and assists Summer
10 Harrison with billing and invoicing, prepared
11 this for Summer.

12 Q. Do you know why she prepared it for
13 Summer?

14 A. I think it was for this litigation.

15 Q. And this was compiled from information
16 that was kept on Southern Coal Corporation's
17 financial records?

18 A. I don't think this information would
19 be in the accounting system that we were talking
20 about earlier. I think this is more just
21 maintained on a spreadsheet.

22 Q. And this is the total sales of
23 Southern Coal Corporation from November of
24 2015 through December of 2017?

25 MR. ROBECK: Which exhibit are you

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1 asking about?

2 MR. BOLLIN: It's 509.

3 MR. ROBECK: 509 or 510?

4 MR. BOLLIN: It's been 509 this whole
5 time.

6 MS. BYROADE: Well, he's got both in
7 front of him.

8 MR. BOLLIN: And if you look back at
9 the transcript you'll see that I said let's just
10 look at 509 first.

11 MS. BYROADE: Well, for the record,
12 510 is the supplemental spreadsheet that
13 contains more than what's on 509.

14 MR. ROBECK: And when he answered the
15 question earlier, he said it included everything
16 for the years '15, '16 and '17. So I think
17 maybe --

18 MR. BOLLIN: Okay. So when I asked
19 the question the answer wasn't correct?

20 MR. ROBECK: Well --

21 MS. BYROADE: You've got two
22 spreadsheets in front of the witness, so why
23 don't you just --

24 MR. BOLLIN: He's only been looking at
25 one the whole time. Okay. We'll straighten it

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1 out. I'm not trying to fool anybody. I'm just
2 trying to work off the spreadsheet. I think the
3 confusion is all over here.

4 MS. BYROADE: Our attention was on
5 510.

6 MR. ROBECK: Well, the confusion's on
7 the record.

8 MS. BYROADE: 510 contains more than
9 what's on 509 and 510 is the sales spreadsheet,
10 so ...

11 THE WITNESS: Okay. I mean, I don't
12 think that I said 509 included everything. I
13 said it includes customers other than Algoma.

14 BY MR. BOLLIN:

15 Q. Okay.

16 A. And so -- because I know what 510 is,
17 that we're going to get to in a second, --

18 Q. Right.

19 A. -- and just to clarify everything,
20 I mean, 509 is just from November of '15 through
21 the end of '17. And I -- as I understood your
22 last question, you said November.

23 Q. I did. Yeah.

24 A. Okay.

25 Q. Okay.

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1 A. So I think this would reflect Southern
2 Coal Sales' sales from November of 2015 through
3 the end of 2017.

4 Q. Okay. And then what is Exhibit 510?

5 A. Exhibit 510 is an updated version of
6 509, to include the months -- to include -- in
7 addition to what's already on 509, to also
8 include the months of January through October
9 of 2015.

10 Q. And why was Exhibit 510 created?

11 A. When I was going through Exhibit 509
12 with counsel, I realized that it started in
13 November of 2015, and I don't know that anyone
14 realized that before. And the topic for this
15 deposition was for the entire year of 2015, so
16 we requested that it be updated.

17 Q. At the end of Exhibit 510 there's four
18 entries entitled Algoma with invoice numbers
19 beginning with 15. Do you see those?

20 A. Yes.

21 Q. Okay. Now, 15 means 2015, right?

22 A. I mean, that would be a typical
23 invoicing mechanism, yes.

24 Q. And same thing with the [REDACTED]
25 entry just before that, [REDACTED], and then

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1 the Invoice Numbers 15DE006, do you see that?

2 A. Yes.

3 Q. Okay. Now, that would mean to you
4 that these are 2015 invoices, right?

5 A. They're adjustments to 2015 invoices.

6 Q. Okay. And those were not included in
7 the prior version, 509, but they are included in
8 510. Do you know why?

9 A. I'm trying to find all those invoices.
10 My expectation is it's because they all relate
11 to invoices that were generated pre-November
12 2015.

13 Q. Okay.

14 A. And so when those invoices were added,
15 the adjustments to those invoices were also
16 picked up.

17 Q. Okay. It's just curious to me
18 that then they're all at the tail end of the
19 spreadsheet. It looks like they were manually
20 cut and pasted in there, as opposed to being
21 imported from someplace.

22 A. I don't read it that way, but I think
23 it's because they relate to invoices that were,
24 most likely, and like I said, I haven't been
25 able to find them as we've been looking here.

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1 Q. Mm-hmm.

2 A. I would expect that those would
3 be related to invoices that occurred between
4 January 1st, 2015, and the end of October 2015,
5 and that's why they're on here. I can't answer
6 why they're on the end.

7 Q. Okay. Now, Exhibit 509 in the lower
8 left-hand corner of the table, which is on the
9 last page of the exhibit says it's the total
10 sales 11/2015 to 12/2017 under SCC PO. Do you
11 see that?

12 A. Yes.

13 Q. Okay.

14 MR. ROBECK: Sorry. Where are you?
15 I'm sorry.

16 MR. BOLLIN: Yeah, Exhibit 509, last
17 page, lower left-hand corner of the table.

18 MR. ROBECK: Okay.

19 BY MR. BOLLIN:

20 Q. SCC is Southern Coal Corporation,
21 right?

22 A. I can't tell what it means on
23 this, I mean, but, I mean, typically, within
24 our organization, SCC means Southern Coal
25 Corporation.

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1 Q. Okay. And then if you look at Exhibit
2 510 in the same spot, last page, lower left-hand
3 corner it says, total sales 1/2015 to 12/2017
4 under SCC/SCSC PO, do you see that?

5 A. Yes.

6 Q. What does that mean to you?

7 A. I don't know for sure, but I
8 would assume that's indicating Southern
9 Coal Corporation and/or Southern Coal Sales
10 Corporation.

11 Q. Okay. Do you know how these records
12 are kept internally? Are they kept under
13 Southern Coal Corporation's ledger or are they
14 kept under Southern Coal Sales Corporation's
15 ledger?

16 I'm sorry. I'm using the word ledger
17 improperly, and it's confusing you, right?

18 A. Yeah.

19 Q. So what would you call these
20 documents, summaries of sales?

21 A. Of invoices or receivable summaries.

22 Q. Yeah.

23 And so --

24 A. They have a couple different names.

25 Sorry to interrupt, but they have a couple of

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1 different names.

2 Q. Well, how would you refer to them?

3 A. It could be -- it really depends
4 on who's asking, shipping summary, accounts
5 receivable summary, invoicing summary. I mean,
6 I've heard all of those things.

7 Q. Okay.

8 A. They all mean the same to me.

9 Q. So 509 and 510 are invoicing
10 summaries. Fair enough?

11 A. Yeah.

12 Q. Okay. Are invoicing summaries kept
13 for each separate entity?

14 A. Yeah.

15 Q. Okay.

16 A. I don't really understand -- I mean,
17 obviously, anytime someone sells a ton of coal,
18 they keep track of selling it. So I'm afraid
19 I'm not understanding your question.

20 Q. Well, I'm just trying to figure this
21 out. So the first one, 509, says it's a summary
22 for Southern Coal Corporation, SCC. The second
23 one, which incorporates most of the first one --

24 A. Right.

25 Q. -- so 510, says it's for SCC/SCSC.

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1 So I'm just trying to figure out, in your
2 records, whose sales these are identified as.

3 A. I believe it's Southern Coal Sales
4 Corporation. I don't know why that distinction
5 is on that sheet. I'm happy to ask the person
6 that prepared it. But I don't know why they
7 changed that.

8 Q. Okay. So they don't keep invoice
9 summaries for Southern Coal Corporation entities
10 all under one invoice summary?

11 MR. ROBECK: Objection to form.

12 THE WITNESS: Well, like, in 2015,
13 for example, all of the sales would have been
14 through Southern Coal Sales Corporation.

15 BY MR. BOLLIN:

16 Q. Okay.

17 A. So there shouldn't be one independent
18 from Southern Coal Sales Corporation.

19 Q. Okay. The sales of Southern Coal
20 Sales Corporation were the same as the Southern
21 Coal Corporation?

22 MR. ROBECK: Objection; form.

23 THE WITNESS: Southern Coal Sales
24 Corporation should be all the sales.

25 BY MR. BOLLIN:

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1 Q. Okay. And then that changed in 2016?

2 A. Late 2015 and 2016 is when Bluestone
3 Energy Sales Corporation started selling all of
4 the coal, except for Algoma.

5 Q. Are any Bluestone Energy Sales
6 Corporation sales reflected on Exhibit 509 or
7 510?

8 A. Yes.

9 Q. What are those?

10 A. So with [REDACTED] and [REDACTED] and [REDACTED] the
11 original contracts were in the name of Southern
12 Coal Sales Corporation. But after November of
13 2015, we asked them to start making payments to
14 Bluestone Energy Sales Corporation, and they
15 agreed to do that. They did not formally assign
16 the contracts, but they started making Bluestone
17 Energy Sales Corporation. And we, internally,
18 assigned the contracts to Bluestone Energy Sales
19 Corporation, and we were administering those as
20 Bluestone Energy Sales Contracts.

21 Q. Why did they appear on Exhibit 509 and
22 510?

23 A. It's my understanding because the
24 original contracts were in the name of Southern
25 Coal Sales Corporation, they were included.

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1 Q. Let's just work off of one for a
2 minute so we don't get confused.

3 A. Okay.

4 Q. Let's go with 510.

5 A. Okay.

6 Q. There are many entries here where the
7 purchaser is identified as Algoma?

8 A. Correct.

9 Q. And that would be Essar Steel Algoma,
10 Inc., who is the plaintiff in this lawsuit,
11 right?

12 A. Correct.

13 Q. Okay. Now, am I mistaken that -- I'll
14 ask this in a positive so we don't get confused
15 in the answer.

16 Algoma didn't have an agreement with
17 any Justice entity prior to November of 2015,
18 did it?

19 A. So Southern Coal Sales or Justice
20 entities were shipping coal to Algoma through,
21 and I always for -- I always mess the name up,
22 Virginia Mining something.

23 Q. Through another third party?

24 A. Yes.

25 Q. Okay. A broker?

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1 A. I don't know if they were a broker,
2 per se. I know they guaranteed the performance
3 of Algoma as it related to payments, and so
4 without having that agreement in front of me I'm
5 hesitant to say there was no agreement between
6 any Justice entity and Algoma, because I know
7 we were shipping, we being one of the Justice
8 entities, was shipping coal to Algoma. And it
9 resulted in a, roughly, \$6 million liability
10 that is caught up in the bankruptcy.

11 Q. Are you aware of any contracts between
12 any Justice entity and Algoma in 2015 prior to
13 November?

14 A. I'm not aware of any written
15 contracts.

16 Q. Are you aware of any other kind of
17 contract?

18 A. Well, I mean, there was, clearly,
19 an agreement by Algoma to buy coal, and by the
20 Justice organization, whichever entity that is,
21 to ship coal to them.

22 Q. Do you think the two spoke?

23 A. I don't know how those conversations
24 went.

25 Q. Or if they occurred?

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1 A. I don't know that.

2 MR. BOLLIN: Take a break?

3 MR. ROBECK: Sure.

4 (Lunch recess taken.)

5 (Ball Exhibit No. 511, a spreadsheet
6 created by Mr. Bollin, was marked.)

7 BY MR. BOLLIN:

8 Q. You've been handed what's been marked
9 Exhibit 511. This is just my handiwork starting
10 with Exhibit 509, not Exhibit 510, but 509.

11 A. Okay.

12 Q. I took that and we took the purchasers
13 listed on the far left and created another line
14 for each of them -- another column for each of
15 them over on the right. Do you see that? That
16 way I could just keep track of what purchaser
17 was buying what.

18 A. Okay.

19 Q. Or, I'm sorry, I guess the best way
20 to say that would be which purchaser was paying
21 what. Okay?

22 MR. ROBECK: I'm sorry. This is 509?

23 MR. BOLLIN: The new one is 511, but
24 it's based on 509. Yes. Yes. Not 510. I
25 didn't have 510.

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1 MR. ROBECK: It's just sorted entries?

2 MR. BOLLIN: That's what I did. I
3 left the original entries on left and added five
4 new columns on the right. And take a moment to
5 satisfy yourself that it looks generally
6 correct, and I don't expect you to --

7 MR. ROBECK: Well, there's no way
8 we're going to figure that out, but we'll go
9 with your representation, subject to check.

10 BY MR. BOLLIN:

11 Q. Yeah. But, I mean, you can spot check
12 a couple anyway, just to satisfy yourself as to
13 how it works. So, for example, the first line,
14 the purchaser says [REDACTED] sales amount is
15 [REDACTED], and the invoiced amount is
16 [REDACTED]. So what I've done in the right, if
17 you go over and you see [REDACTED] and first number
18 underneath there is the invoiced amount, right,
19 [REDACTED], right?

20 A. Yes.

21 Q. So I just wanted you to understand how
22 I set it up.

23 A. Okay. Yeah. I think I follow you.

24 Q. And I don't have a whole lot to do
25 here with this, except I wanted to -- part of my

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1 purpose here was to figure out how much people
2 were paying between November of 2015 and
3 December of 2017 under, at the time, for Exhibit
4 509 for, SCC PO. That's what Exhibit 509 says,
5 right?

6 A. I think that's right.

7 Yes. That's correct.

8 Q. Okay. And we can all check my math
9 later to see if the spreadsheet did it right,
10 but I came up with sales -- I'm sorry, what
11 would you call this? You would call this
12 invoiced amounts, right? That's what you're
13 recording here?

14 A. Yeah. I mean, I think this would be
15 a summary of accounts receivable or invoiced
16 amounts. I think they're the same thing.

17 Q. Okay.

18 A. Like I said, some people refer to
19 these things differently, but I think this is
20 a summary of invoices and it also reflects what
21 your accounts receivable summary over the course
22 of the year was.

23 Q. Okay. And Southern Coal Corporation
24 and Southern Coal Sales Corporation use an
25 accrual method of accounting, correct?

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1 A. Yes.

2 Q. Okay. So if there's a sale booked at
3 a particular time, that's when you count it for
4 your accounting purposes, right?

5 A. Correct.

6 Q. Okay. You don't wait for the
7 collections to book it?

8 A. No.

9 Q. Okay. So for 2015, you booked sales
10 of \$39,223,474.20 from Algoma; is that right?

11 A. I'm sorry. I don't see that number.

12 Q. Did I say 2014 or 2015?

13 A. I see it now. I didn't see this
14 separate by year down here.

15 Q. Yeah. The total's at the bottom. I'm
16 sorry.

17 A. Yeah. No, I gotcha.

18 Q. Okay.

19 A. Yeah. Again, taking your caveat
20 earlier, assuming your math is right, that's
21 what this reflects, yes.

22 Q. Okay. And a little over 24 million in
23 sales to Algoma in 2016, correct?

24 A. Yes.

25 Q. Okay. And the total of sales to

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1 Algoma in 2015, 2016 and 2017 is, approximately,
2 63 million?

3 A. That's what this says, yes.

4 Q. Okay. And that dwarfs any of your
5 other customers, correct?

6 A. [REDACTED] [REDACTED]
[REDACTED]

8 Q. Are there any significant coal
9 customers that were missing off of this
10 spreadsheet?

11 MR. ROBECK: Well, objection just to
12 significant, whatever you mean by that.

13 THE WITNESS: During this time period
14 for Southern Coal Sales, just the other ones
15 that are reflected on what has been marked
16 as 510, although they're, typically, a spot
17 purchaser, [REDACTED] has bought a
18 significant amount of coal from Southern Coal
19 Sales.

20 BY MR. BOLLIN:

21 Q. And were those sales to [REDACTED] did
22 they postdate November 1, 2015?

23 A. No, they predate November 1.

24 Anything after November 1 with
25 [REDACTED] would be through Bluestone Energy

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1 Sales.

2 Q. Okay. So Bluestone Energy Sales was
3 also making coal sales at this time, late 2015
4 and through 2016?

5 A. After November. I forgot the exact
6 date. It was formed, like, the first half of
7 November, and so after that point it would have
8 also been making sales.

9 Q. And were those sales from the same
10 mines, A&G and Coal Mountain?

11 A. They could be, yes.

12 Q. Were there any other significant
13 customers of Bluestone during that time period,
14 November 1, 2015, through the end of 2016?

15 A. Again, on 510 I see that we sold
16 what appears to be a vessel a Panamax vessel to
17 [REDACTED]. You know, that's, roughly, [REDACTED] tons,
18 so that's pretty significant.

19 I think most of the other orders
20 would have been spot-type orders, so nothing
21 approaching the 63 million to Algoma.

22 Q. And the [REDACTED] sales, you're talking
23 about, those also predate November 1, 2015?

24 A. Yes.

25 Q. Did Bluestone sell to [REDACTED] in 2016?

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1 A. Not that I'm aware of. That's not a
2 real longstanding relationship, and I think that
3 was just, basically, a vessel, plus a couple of
4 additional trains, and so it was -- all in it
5 was less than a [REDACTED] tons, and I
6 don't think that that continued.

7 Q. Did Bluestone sell met coal?

8 A. Bluestone Energy Sales, or Bluestone
9 Resources as it's on the org chart? I need to
10 clarify.

11 Q. Okay. Yeah. That's fair. Bluestone
12 Energy Sales Corporation, did they sell met
13 coal?

14 A. They sold met coal and steam coal.

15 Q. To whom?

16 A. [REDACTED] would be one of their
17 purchasers. Time frames run together, but
18 Bluestone also sells to [REDACTED]. You know,
19 Bluestone Energy Sales has sold to a lot of
20 the domestic steel mills, [REDACTED], [REDACTED],
21 [REDACTED], [REDACTED]. And, you know, those sales
22 today are through Bluestone Coal Sales, but over
23 the years those are typically the buyers for the
24 Bluestone Resources, met coal, which, you know,
25 for a period of time would have been marketed

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1 by Bluestone Energy Sales.

2 Q. You'll have to excuse me, I get
3 lost with all the Bluestone entity names.
4 Bluestone -- you just identified Bluestone Sales
5 Corporation and then you said the one that's
6 operating now is Bluestone ...

7 A. Coal Sales --

8 Q. -- Coal Sales --

9 A. -- Corporation.

10 Q. Wait. That is operating now?

11 A. Yes.

12 Q. Oh, okay.

13 And it's Bluestone Coal Sales
14 Corporation?

15 A. Correct.

16 Q. That's what's operating now?

17 A. Yes.

18 Q. Okay. Which one is not -- which
19 one has stopped operating? Isn't there one that
20 has stopped operating?

21 A. Bluestone Energy Sales Corporation.

22 Q. Okay. How do you keep them straight?

23 And that was the standalone company
24 under -- that was owned -- wholly owned by Jay
25 Justice?

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1 A. Jim Justice.

2 Q. By Jim Justice?

3 A. But, yes, that's a standalone entity.

4 Q. And that's the entity that took out
5 the loan that funded the contract with Algoma?

6 A. It was intended to fund Algoma, and,
7 like I said, that didn't quite work out like we
8 had hoped because those receivables never were
9 assigned to Bluestone Energy Sales. So it did
10 end up, ultimately, financing a lot of other
11 coal sales that Bluestone Energy Sales was
12 representing from Justice Family-owned mines, --

13 Q. Okay.

14 A. -- which are the mines we've discussed
15 here today, but, yes, it's -- it's that entity
16 that had Carter Bank facility.

17 Q. Did it also -- in addition to funding
18 other -- other efforts through other coal
19 companies, did it also end up funding the
20 Southern Coal Sales Corporation's contract
21 with Algoma?

22 A. I think that Bluestone Energy Sales
23 did advance Southern Coal Sales some money.

24 Q. Okay.

25 A. It loaned some money to Southern Coal

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1 Sales.

2 Q. Which, in turn, loaned it to Southern
3 Coal Sales Corporation?

4 A. That's -- that's who I meant.

5 Q. Okay. That's what I'm asking.

6 A. Yeah.

7 Q. I'm trying to be straight.

8 A. Yeah. I just didn't say corporation.

9 Q. Okay. So it would have been a direct
10 -- direct loan from Bluestone Energy to Southern
11 Coal Sales Corporation?

12 A. Again, like we discussed earlier,
13 without having it in front of me, it could have
14 flowed through Southern Coal Corporation to
15 Southern Coal Sales.

16 Q. Okay.

17 A. Or the money could have gone directly
18 to Southern Coal Sales Corporation. I do
19 believe, though, even if the money had flowed
20 directly, the accounting entry would have flown
21 through Southern Coal Corporation and then down
22 to Southern Coal Sales Corporation.

23 Q. Okay. And in order to follow that
24 path, we'd have to look at the ledger?

25 A. Yes.

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1 Q. Now, Bluestone Coal Sales
2 Corporation --

3 A. I'm sorry.

4 Q. I'm sorry.

5 A. Or I mean the cash -- the bank
6 statements would show that, as well.

7 Q. Okay.

8 A. You don't necessarily need the ledger.

9 Q. If you have all the bank statements?

10 A. Well, yeah. I mean, the bank -- the
11 Southern Coal Sales bank statement, you would
12 be able to tell where the money came from.

13 Q. Well, if it comes from Southern Coal
14 Corporation, you don't know where Southern Coal
15 Corporation got the money, right?

16 A. Yes. But you would know that Southern
17 Coal Sales Corporation received it from Southern
18 Coal Corporation.

19 Q. Right. Okay. But you won't be able
20 to tell that it came from somebody who gave it
21 to Southern Coal Corporation?

22 A. If they did. Like we said earlier,
23 there could be instances where they did not.

24 Q. Right. We just don't know.

25 Bluestone Coal Sales Corporation

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1 continues to exist and operate today?

2 A. Yes.

3 Q. And what is it selling?

4 A. Today it sells the metallurgical coal
5 of that Bluestone Group that you're looking at
6 on Exhibit --

7 Q. 502?

8 A. -- 502, second page.

9 Q. Do you know what mines are involved?

10 A. Today the mines running at the
11 Bluestone Group of Companies are Red Fox Surface
12 Mine, which is Justice Energy Company.

13 Q. What does that mean, which is Justice
14 Energy Company?

15 A. That's the name of the operator.

16 Q. Oh, I see.

17 A. It should be right there near your
18 pen.

19 Q. Oh, yeah. Okay. So Justice Energy
20 Company, Inc., owns, what was it?

21 A. It owns and operates the Red Fox
22 Surface Mine.

23 Q. Okay.

24 A. Pay Car Mining operates what's known
25 as the 58 Underground Mine. Frontier Coal

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1 Company operates what is known as the 57
2 Underground Mine. And National Resources,
3 Inc., operates the 39A Surface Mine.

4 Q. And Bluestone Energy is in the
5 business of selling National Resources, Inc.,
6 coal?

7 A. No.

8 Q. Okay.

9 A. Bluestone Coal Sales is, --

10 Q. That's right.

11 A. -- not -- not Bluestone Energy.

12 Q. Okay. Bluestone Coal Sales
13 Corporation sells coal from National Resources
14 Mine 39A surface mine?

15 A. Yes.

16 Q. Now, I understand that in 2015
17 and 2016 Southern Coal Sales Corporation had a
18 single bank account that changed in 2016. They
19 went from one bank account at one bank to a new
20 bank account at a second bank in 2016, is that
21 fair?

22 A. Yes.

23 Q. Okay. And the first bank account was
24 with Wells Fargo?

25 A. Yes.

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1 (Ball Exhibit No. 512, Bank statements
2 from January 2015 through July of 2016, was
3 marked.)

4 BY MR. BOLLIN:

5 Q. I'm handing you what's been marked
6 as Exhibit 512, which are the bank account
7 statements produced to us in litigation Bates
8 labeled SC --

9 MS. SCHULTZ: They're not sequential.
10 Sorry.

11 MR. BOLLIN: Oh, okay. Nevermind.
12 They were not produced to us in a sequential
13 manner, they have now been put into a
14 chronological order, and they comprise [sic]
15 the bank statements from January 2015 through
16 July of 2016.

17 MS. SCHULTZ: And what we have of
18 them, there are some months that are missing,
19 so ...

20 MS. BYROADE: So are these produced
21 pursuant to the subpoena?

22 MS. SCHULTZ: No. So everyone that
23 you produced, we used your number. If there are
24 ones that you didn't produce but Wells Fargo
25 did, we used the Wells Fargo number.

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1 MR. BOLLIN: Okay. So they're mostly
2 your numbers.

3 MS. SCHULTZ: They're mostly your
4 numbers.

5 They may, in fact, be all. I can't
6 remember.

7 I said they may be all their numbers.

8 I know that we --

9 BY MR. BOLLIN:

10 Q. First of all, do you recognize the
11 statements in the exhibit?

12 A. Yeah. Generally, I recognize these to
13 be monthly bank statements from Wells Fargo.

14 Q. Okay. I'm going to ask you to turn to
15 Page 22262, which is about 60 percent of the way
16 through the exhibit.

17 A. Okay.

18 MS. BYROADE: They're not sequential,
19 so how do we find it?

20 MS. SCHULTZ: It may be easier to tell
21 him the month, because they are chronological.

22 MR. BOLLIN: Yeah. That was going to
23 be my next question.

24 BY MR. BOLLIN:

25 Q. Is this the bank statement for

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1 November of 2015?

2 A. Okay.

3 Q. Is this the November 2015 bank
4 statement for Southern Coal Sales Corporation?

5 A. Yes.

6 Q. What was the beginning balance that
7 month?

8 A. [REDACTED]

9 Q. What was the ending balance?

10 A. [REDACTED]

11 Q. How was this account used by Southern
12 Coal Sales Corporation?

13 A. To -- I mean, just like any other bank
14 account would be used, to receive -- receive
15 payments from coal buyers. And then, you know,
16 from there the money was used as it was -- as
17 determined by management.

18 Q. Management being Mr. Justice?

19 A. Jay Justice.

20 Q. Now, if you'll take a look at the
21 November 5th entry on the first page, this
22 appears to be the first payment from Algoma
23 under the original agreement with Southern Coal
24 Sales Corporation. Do you see that payment?

25 A. Yes.

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1 Q. And what's the amount?

2 A. [REDACTED]

3 Q. Okay. If you turn the page to debits
4 on the next page, you see an entry on November
5 6th for [REDACTED]. Do you see that?

6 A. I do, yes.

7 Q. And it says it's an online transfer to
8 an Account Number [REDACTED]. Do you know who
9 the owner of that account is?

10 A. Yes. I need some assistance, though.

11 Q. Sure.

12 A. Southern Coal Corporation.

13 Q. Do you know why that payment was made
14 to Southern Coal Corporation?

15 A. I can't tell from the bank statement,
16 but consistent with our discussion earlier, it
17 would -- it would be as a repayment of money
18 that had been previously advanced to Southern
19 Coal Sales by Southern Coal Corporation.

20 Q. So if we were to go back through the
21 prior deposits in 2015 we would be able to find
22 transfers from Southern Coal Corporation, which
23 would represent a loan to Southern Coal Sales
24 Corporation?

25 A. Or it could be earlier. It doesn't

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1 have to be in 2015. Southern Coal Sales
2 Corporation has been around since, I believe,
3 2010. So, I mean, there's just no way to know
4 specifically without looking at it, but the loan
5 could be from 2011 or '12 that Southern Coal
6 Sales is just now paying back.

7 Q. And there's no documentation of that
8 loan, other than what we can find in your bank
9 statements, right?

10 A. Well, no. That's the --

11 MS. BYROADE: Asked and answered.

12 THE WITNESS: That's the transactions
13 that are recorded on the books of each company.

14 BY MR. BOLLIN:

15 Q. So that would be on the ledger?

16 A. Yeah.

17 Q. Is there a running tally someplace?

18 A. It would be on that.

19 So if you ran a summary of the
20 intercompany accounts, it would show you what
21 the balance is. And, again, that's the general
22 ledger. That would just be a different report
23 that you'd ask the accounting system to
24 generate.

25 Q. Okay. Do you know how much Southern

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1 Coal Corporation loaned to Southern Coal Sales
2 Corporation in 2015?

3 A. Not the specific amount in 2015.

4 Q. Do you know how much Southern Coal
5 Corporation loaned to Southern Coal Sales
6 Corporation in 2016?

7 A. Not specifically, no. I mean, I think
8 we can tell how much was sent to them by going
9 through these statements, but I don't know those
10 amounts off the top of my head.

11 Q. Are any amounts received from Southern
12 Coal Corporation automatically loans? Do they
13 have to be loans?

14 A. Typically, anytime a parent or
15 shareholder loans money to a subsidiary, it's
16 initially treated as a loan. There have been
17 times where those loans have been converted
18 to equity and capitalized, but the initial
19 treatment has always been a loan.

20 Q. And where do we look to see if a
21 loan's been capitalized?

22 A. You would see it -- you would see
23 it within the detail of the shareholder loan
24 account, general ledger, again.

25 Q. Okay. And, also, we can tie it back

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1 to the statements, if you want, but really what
2 I really want to know is who owns the different
3 account numbers. So why don't I go through
4 those. If you can tell me who owns them, great.
5 If you can't, we'll go to the statements and
6 figure it out.

7 [REDACTED]

8 A. That's also Southern Coal Corporation.

9 Q. Do you know the purpose in the
10 different accounts, or behind the different
11 accounts?

12 A. Not right offhand, because, typically,
13 we only have separate accounts if -- and
14 we don't do this anymore, but historically
15 sometimes there would be a payroll account
16 that was separate from an operating account.
17 But Southern Coal Corporation does not have
18 employees, so I need to go back and double-check
19 that.

20 Q. Okay. Who owns account number
21 [REDACTED]

22 MR. ROBECK: What were the numbers,
23 just the last four?

24 MR. BOLLIN: [REDACTED]

25 THE WITNESS: Do you have a transfer

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1 on here because I don't have that in my notes?

2 BY MR. BOLLIN:

3 Q. Sure. Yeah. The date I have on that
4 is March 22, 2016.

5 MR. ROBECK: That's money coming in,
6 right?

7 MR. BOLLIN: Yeah. It's a deposit.

8 THE WITNESS: I can't tell from
9 looking at this.

10 BY MR. BOLLIN:

11 Q. Okay. What about Account Number
12 [REDACTED]

13 A. Bluestone Resources, Inc.

14 My notes only have the last four.

15 If you need to read the whole account for the
16 record, that's fine, but if --

17 Q. [REDACTED] is that what you're saying?

18 A. Yeah. I'd defer to you, though.

19 Q. Okay. All right. Account number
20 [REDACTED], is that what we just did?

21 A. That's what we just discussed,
22 Bluestone Resources.

23 Q. Okay. [REDACTED] That one only appears
24 once for [REDACTED] Let's skip to the next one.

25 A. Okay.

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1 Q. [REDACTED]?

2 A. James C. Justice Companies, Inc.

3 Q. [REDACTED]

4 A. Encore Leasing, LLC.

5 Q. Encore?

6 A. Yes. E-n-c-o-r-e.

7 Q. Is that a Justice Company?

8 A. It -- it is owned by the Justice
9 family.

10 Q. Directly by the family?

11 A. Yes.

12 Q. What's the business of Encore Leasing?

13 A. It owns aircraft.

14 Q. So a payment to Encore Leasing
15 would typically be to pay for the lease of an
16 aircraft?

17 A. That's what I would expect it to be,
18 yes.

19 Q. Who owns Account [REDACTED]

20 A. Southern Coal Corporation.

21 Q. And who owns Account [REDACTED]

22 A. I'm sorry. Can you repeat?

23 Q. Yes. [REDACTED].

24 MR. ROBECK: Where's the entry on it?

25 MR. BOLLIN: That one's a one-time

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1 entry for \$ [REDACTED] Let's skip it.

2 BY MR. BOLLIN:

3 Q. Who owns account [REDACTED]

4 MR. ROBECK: Where's the entry on
5 that? That's 1/11/2016. It's very small.
6 1/13/2016.

7 THE WITNESS: What was the last four
8 again?

9 BY MS. BOLLIN:

10 Q. [REDACTED].

11 A. I don't believe that's a Justice
12 account. I don't see it anywhere.

13 Q. Okay. Who owns account [REDACTED]

14 A. Justice Family Farms, LLC.

15 Q. Account Number [REDACTED], whose is that?

16 A. James C. Justice Companies, Inc.

17 Q. Sorry. I've come across a couple that
18 you've identified already, so I'm skipping.

19 All right. [REDACTED]

20 MR. ROBECK: Where is that one?

21 MR. BOLLIN: December 8, 2015, debit.

22 THE WITNESS: I don't know who that
23 is.

24 BY MR. BOLLIN:

25 Q. Okay. Next I've got a Chase E-Pay

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1 statement on February 17 of 2016.

2 MS. BYROADE: Is that a different
3 exhibit?

4 BY MR. BOLLIN:

5 Q. It shouldn't be. It says Chase,
6 though, doesn't it?

7 Well, I got it off of this debit
8 statement, so I think it was a payment to Chase,
9 a Chase account, that is, \$ [REDACTED] on February
10 17th, Page 22185.

11 A. I -- I can't tell what that is.

12 Q. Okay. Next up I'd like to know to
13 whom a payment was made on March 7, 2016?

14 Yeah, March 7, 2016, it's got a
15 Pacific Coast Bank, First National Bank
16 transaction detail, [REDACTED].

17 MR. ROBECK: You're talking about the
18 payment coming in?

19 MR. BOLLIN: Is that a deposit?
20 No, it's a debit, on Page [REDACTED].

21 MS. BYROADE: It says it's a credit.
22 You're talking about the one that says Pacific
23 Coast Bank, First National Bank?

24 MR. BOLLIN: Yeah. That one.

25 THE WITNESS: I can't tell who that

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1 is.

2 BY MR. BOLLIN:

3 Q. Okay. So sitting here today, is it
4 possible for you to tell us the reason behind
5 the transfers of money to these entities we just
6 identified in the Wells Fargo Bank statements?

7 A. It would be repayment of loans that
8 had previously been made to Southern Coal Sales
9 Corporation, or, possibly, it could be to
10 Southern Coal Corporation, as well. But
11 it would be for repayment of loans that had
12 previously been advanced.

13 Q. Okay. And do you know that or are you
14 assuming it?

15 A. No, that's why Southern Coal Sales
16 would send the money to these entities.

17 Q. Okay. And, again, in order to find
18 out how much Southern Coal Sales Corporation
19 owed to each of these entities, we would need
20 to look at a summary of intercompany accounts?

21 A. Specifically, by entity. I mean, we
22 know the total amount from the balance sheet.
23 But if you want to know by entity, you would
24 have to look at the general ledger.

25 Q. And that would tell us when the debt

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1 was incurred and when it was paid back, if it
2 was paid back?

3 A. It would tell you the interaction.

4 Typically, these are multiple
5 advances, not a single large advance, and the
6 repayments don't always match up perfectly to
7 the advance. So you may have one -- you could
8 have one advance and multiple repayments, or
9 you could have multiple advances and one
10 large repayment. They don't always match up
11 perfectly, but, yes, that detail would tell you
12 the history between those two entities.

13 Q. This is Exhibit 512 we're looking at?

14 A. Yes.

15 Q. Okay.

16 (Ball Exhibit No. 513, the monthly
17 bank statements for Southern Coal Sales
18 Corporation from Chase, dated June of 2016
19 through April 2017, was marked.)

20 BY MR. BOLLIN:

21 Q. Here's Exhibit 513. Do you know what
22 this exhibit is?

23 A. These appear to be the monthly bank
24 statements for Southern Coal Sales Corporation
25 from Chase.

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1 Q. And they're dated June of 2016 through
2 April 2017?

3 A. Yes.

4 Q. I'm going to go through a similar
5 exercise here, --

6 A. Okay.

7 Q. -- but there aren't as many state
8 -- accounts that we need to identify, so it
9 should go a little faster.

10 Do you know who the owner of Account
11 Number [REDACTED] is?

12 A. Bluestone Energy Sales Corporation.

13 Q. Who owns Account [REDACTED]?

14 A. Can you tell me where that one is?

15 Q. Sure.

16 Well, it's a one-time payment.

17 September 6th, 2016.

18 A. What was the numbers again?

19 Q. Sure. It ends with [REDACTED].

20 MR. ROBECK: I'm not finding it.

21 MR. BOLLIN: Yeah. I'm not either.

22 Let me look.

23 BY MR. BOLLIN:

24 Q. Okay. I've got the number written
25 down wrong, probably. Let me see here. It's

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1 the [REDACTED] deposit on September 6th. That's
2 what I'm asking about.

3 A. I can't tell, other than it came from
4 Carter Bank & Trust. I can -- I -- I don't know
5 if that's one of our accounts or not, but like
6 I said earlier, we, obviously, bank with -- we
7 borrow money. We don't run bank accounts with
8 Carter Bank & Trust.

9 Q. Mm-hmm.

10 A. But I can't tell, specifically, what
11 that particular deposit is for.

12 Q. Okay. Or who's making the deposit,
13 right?

14 A. Right. I just can't tell, other than
15 it appears to have initiated from Carter Bank &
16 Trust.

17 Q. Okay. Who's the owner of Account
18 Number [REDACTED]

19 A. Bluestone Energy Sales Corp.

20 MS. BYROADE: That's asked and
21 answered.

22 BY MR. BOLLIN:

23 Q. I said the wrong number. I really
24 apologize.

25 It is [REDACTED]

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1 A. Southern Coal Corporation.

2 Q. And hopefully we'll have a bunch of
3 repeats here and it will be easy.

4 Who owns Account [REDACTED]

5 A. Southern Coal Sales Corporation.

6 Q. Southern Coal Sales Corporation?

7 A. That's what my notes have.

8 Q. As opposed to Southern Coal
9 Corporation?

10 A. I'm happy to double-check it, but the
11 notes I'm referring to show that it's Southern
12 Coal Sales Corporation.

13 Q. Okay. Then, I mean, that would be a
14 third bank account that we didn't know about,
15 right?

16 MR. ROBECK: What do you mean that we
17 didn't know about?

18 MR. BOLLIN: Well, I mean, I asked
19 you at the beginning of this, you had two banks
20 account, right? Yes, we had two bank accounts.

21 THE WITNESS: Well, that's one of
22 the ones on this statement, now that I look at
23 it. It's the savings --

24 MR. BOLLIN: Okay.

25 THE WITNESS: -- that's linked to the

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1 checking account.

2 BY MR. BOLLIN:

3 Q. So they transferred to savings?

4 MS. BYROADE: So you did know about
5 it?

6 BY MR. BOLLIN:

7 Q. So it's a transfer to savings?

8 A. Yeah. These two accounts are linked
9 together.

10 Q. Okay. So if you look at that
11 statement from July of 2016, it shows that
12 transfer from the checking account to the
13 savings account [REDACTED] Do you see
14 that, or I guess it's a money market account,
15 right?

16 A. Yes.

17 Q. Okay. And if you turn to the last
18 -- the next page, it's got the savings summary,
19 and it shows deposits of a little over [REDACTED]
20 and withdrawals of the same amount, right?

21 A. Yes.

22 Q. And those withdrawals are being
23 transferred to the Bluestone -- one of the
24 Bluestone accounts. Which Bluestone entity
25 is that? [REDACTED], that's Bluestone Energy Sales

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1 Corporation?

2 A. Correct.

3 Q. Do you know why the money was
4 transferred to the savings account prior
5 to being transferred to Bluestone Energy?

6 MR. ROBECK: Objection; form.

7 THE WITNESS: Only for, you know,
8 typical why you would put money in a money
9 market account. But it appears to be very
10 quick, so I'm not sure -- I'm not sure what that
11 would accomplish, and I don't recall us doing
12 that at the time, so I'm not sure why that
13 happened.

14 BY MR. BOLLIN:

15 Q. Okay. Do you know which entity owned
16 Account Number [REDACTED]

17 A. That's Bluestone Resources, Inc.

18 Q. If you turn to the statement for
19 January 4 of 2017, --

20 A. Okay.

21 Q. -- do you see it, first page is Bates
22 stamped 22009.

23 A. Okay. I'm there.

24 Q. On the second page, 22010, it has
25 several -- references several checks cut, do

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1 you see that, Checks 1002 through 1007?

2 A. Yes.

3 Q. The next -- two pages later it
4 actually has images of those checks?

5 A. Yes.

6 Q. And these are checks totaling
7 approximately \$ [REDACTED], and they're all made
8 out to Carter Bank & Trust. Do you see that?

9 A. I do, yes.

10 Q. Why was Southern Coal Sales
11 Corporation cutting checks to Carter Bank &
12 Trust in December of 2016?

13 A. I can't tell from the face of the
14 checks what these are specifically for, but,
15 based on the amounts, I believe those are loan
16 payments for loans from various Justice-owned
17 entities to Carter Bank & Trust.

18 Q. Did Carter Bank & Trust make any loans
19 to Southern Coal Sales Corporation itself?

20 A. No.

21 (Ball Exhibit No. 514, the tax return
22 for Southern Coal Corporation for 2013, was
23 marked.)

24 BY MR. BOLLIN:

25 Q. I'm handing to you Exhibit 514. Let

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1 me know if you recognize the exhibit.

2 A. This appears to be the tax return for
3 Southern Coal Corporation for 2013.

4 Q. Now, it starts off with a document
5 called, Qualified Subchapter S Subsidiary
6 Election. Do you see those forms?

7 A. Yes.

8 Q. What are these forms?

9 A. When your parent company is a -- an
10 S Corporation, which, basically, allows it to
11 have pass-through status for tax purposes, you
12 file a similar form on behalf of each of the
13 subsidiaries to qualify them under the same
14 manner. That way their income and loss is
15 passed through to the parent, and then the
16 parents', basically, passes through to the
17 shareholders.

18 Q. Okay. Now, unlike the other tax
19 returns that we're going to take a look at from
20 2014 onward, this one indicates that it's filed
21 on behalf of Southern Coal Corporation, and it
22 does not say that it's also being filed on
23 behalf of any subsidiaries. Do you see that?

24 A. Where are you?

25 Q. I went to the first page of the tax

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1 return itself, 22354.

2 I'm sorry, that's Texas -- Kentucky.

3 I'm at the wrong page.

4 22309.

5 A. Okay. Where are you?

6 Q. At the top it says, name, Southern
7 Coal Corporation?

8 A. Yes. I see that.

9 Q. Okay. So unlike the other tax returns
10 we're going to look at, this one indicates it
11 was filed for Southern Coal Corporation. It
12 doesn't identify any other entities that it
13 was filed on behalf of. Do you know why?

14 MR. ROBECK: And let me just say for
15 the record that since we agreed that the time
16 period of the deposition would start in 2015, we
17 did not go back to 2013.

18 MR. BOLLIN: Okay.

19 MR. ROBECK: So he may or may not
20 know, but we certainly didn't prepare to -- have
21 the witness prepare to answer questions about
22 2013.

23 THE WITNESS: I think it's just
24 the way the preparer presented it, because the
25 tax return is Southern Coal Corporation's tax

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1 return, but the subsidiaries are definitely
2 included within the return.

3 BY MR. BOLLIN:

4 Q. Where it says, signature of officer,
5 it's got your name typed; is that right?

6 A. Yes.

7 Q. Okay. Did you approve this tax
8 return?

9 A. I would have definitely signed this
10 tax return, --

11 Q. Okay.

12 A. -- yeah.

13 Q. It also says that it was prepared by a
14 non-paid preparer. Do you know who prepared the
15 tax return?

16 A. Brian Rice.

17 Q. Who is that?

18 A. Brian Rice, R-i-c-e.

19 Q. Who's Brian?

20 A. At the time he was a CPA that worked
21 for one of the Justice Companies.

22 Q. Southern Coal Sales Corporation was a
23 subsidiary of Southern Coal Corporation in 2013,
24 right?

25 A. Yes.

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1 Q. Was this tax return meant to include
2 Southern Coal Sales Corporation, as well?

3 A. It's my understanding that it should
4 have. I need to find the subsidiary schedule.

5 Q. I believe it's on Page 22334.

6 A. Yeah. I don't see it on there. I
7 don't know why.

8 MR. ROBECK: That's a schedule of
9 companies they own the stock in.

10 MS. BYROADE: In other words, it's
11 a schedule for -- it's a statement for Schedule
12 B on Page 2 of the return that asks about
13 corporations in which Southern Coal Corporation
14 owns stock.

15 BY MR. BOLLIN:

16 Q. Okay. I don't think there is a
17 statement that lists -- unlike 2014, '15, '16,
18 '17, I don't see a statement that lists any
19 subsidiaries. So I'm just trying to figure out
20 if this is Southern Coal Sales Corporation's
21 return or not.

22 A. I'm not aware of Southern Coal Sales
23 Corporation ever filing a standalone tax return.

24 Q. So this tax return exhibit -- that's
25 included in Exhibit 514 was intended to be the

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1 tax return filed on behalf of Southern Coal
2 Sales Corporation?

3 MR. ROBECK: Well, the witness didn't
4 prepare to answer questions about 2013 tax
5 returns, so, you know, I mean, that's five years
6 ago.

7 If he knows, fine, but, you know, he
8 doesn't need to speculate either.

9 MR. BOLLIN: Okay.

10 (Ball Exhibit No. 515, the 2014 income
11 tax return for Southern Coal Corporation and
12 subsidiaries, was marked.)

13 BY MR. BOLLIN:

14 Q. We've just had marked Exhibit 515,
15 which I believe to be the 2014 income tax return
16 for Southern Coal Corporation and subsidiaries;
17 is that correct?

18 A. Yes.

19 Q. It indicates that it was to be signed
20 by the VP and COO. Were you the VP and COO in
21 2014?

22 A. I think they're combining two titles
23 there. It was actually vice president of
24 operations, so I think -- I think that may
25 be -- I mean, probably the same practical

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1 effect, --

2 Q. Okay.

3 A. -- but my recollection is I signed
4 this one, as well.

5 Q. All right. The copy we have is,
6 apparently, a file copy or something?

7 A. Yeah.

8 Q. Okay. But this is a true and
9 accurate copy of what was filed on Southern
10 Coal Corporation and its subsidiaries in 2014?

11 A. I believe so, yes.

12 Q. Okay. Now, this tax return does
13 include schedules that reflect revenue,
14 expenses, assets and liabilities of
15 subsidiaries, and that includes --

16 MS. BYROADE: Just for the record,
17 these are not the complete file, correct,
18 because these are the ones I printed today?

19 MS. SCHULTZ: Sorry. It's just
20 federal. So this is the complete federal tax
21 return, --

22 MS. BYROADE: Right.

23 MS. SCHULTZ: -- but it does not
24 include the state. It's not exactly as
25 produced. But just for ease of saving the

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1 earth, we included the federal portion only.

2 MS. BYROADE: Yeah. Great.

3 BY MR. BOLLIN:

4 Q. Okay. If you can go to the page
5 marked 22598 within Exhibit 515.

6 A. Okay.

7 Q. This reports the combined revenue and
8 expenses for 11 sub-entities for 2014, correct?
9 It goes on to the next page.

10 A. Yes.

11 Q. Okay. What was the combined revenue
12 of all these sub-entities, upper left corner?

13 A. [REDACTED]

14 Q. Okay. And how much of that came from
15 Southern Coal Sales Corporation?

16 A. [REDACTED]

17 MR. ROBECK: And just for the record,
18 we're, again, a year before the agreed-upon time
19 period for the deposition, right?

20 MR. BOLLIN: Okay. Yes. Thank you.

21 (Ball Exhibit No. 516, the federal tax
22 return for Southern Coal Corporation and its
23 subsidiaries from 2015, was marked.)

24 BY MR. BOLLIN:

25 Q. You've been handed Exhibit 516, which

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1 is the federal tax return for Southern Coal
2 Corporation and its subsidiaries from 2015.

3 MS. SCHULTZ: And, again, for the
4 record, this is just the federal portion that's
5 shortened from the complete version that was
6 produced to us.

7 BY MR. BOLLIN:

8 Q. Do you recognize the document?

9 A. It's the 2015 tax return for Southern
10 Coal Corporation and subsidiaries.

11 Q. And, again, this looks like a file
12 copy. Is this identical to the copy that you
13 signed and filed on behalf of Southern Coal
14 Corporation and its subsidiaries?

15 A. I can't say for sure if I signed this
16 one.

17 Q. Do you know who did?

18 A. I don't know who did.

19 Q. Do you know if this is a true and
20 accurate copy of Southern Coal Corporation
21 subsidiary's tax filing for 2015?

22 A. I believe it to be so, yes.

23 Q. If you turn to Page 22767, again,
24 we've got the combined and consolidated revenue
25 and expenses for subsidiaries. Now we're down

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1 to six entities, as opposed to 11 on the prior
2 year, right?

3 A. Yes. Six not counting Southern Coal
4 Corporation, right.

5 Q. Right. Six subsidiaries, right?

6 A. Right. Yeah. You may have said that.
7 As I was counting it I just --

8 Q. Okay. And first of all, what happened
9 to the other five entities?

10 A. They were Kentucky Fuel Corporation
11 and A&G coal Corporation, Justice Low Seam
12 Mining and Virginia Fuel Corporation were spun
13 off to be standalone entities. That was
14 finance-driven. Similar to the Bluestone Energy
15 Sales Conversation we had earlier, they had
16 the ability to obtain financing as standalone
17 entities, whereas, being part of the Southern
18 Coal Corporation structure made it more
19 difficult.

20 I haven't put them side by side. I
21 think I named four. I don't know what the fifth
22 one was.

23 Q. Do those entities continue today?

24 A. Yes.

25 Q. Are they active?

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1 A. No.

2 Q. Were they associated with particular
3 mines?

4 A. Yes.

5 Q. And those mines aren't being mined
6 today?

7 A. No.

8 Q. The combined receipts and sales, the
9 combined revenue in 2015 from all these entities
10 was [REDACTED]; is that right?

11 A. Correct.

12 Q. That's a lot less than the prior year,
13 where it was [REDACTED], correct?

14 A. Yes.

15 Q. Do you know why?

16 A. I know in 2015 it was a very bad year
17 for the coal market, in general, so I would -- I
18 would hazard a guess that that's the primary
19 reason. And then I think also just not having
20 the other five entities in here would,
21 obviously, have an impact. But the coal
22 market would be the main reason.

23 Q. The largest contributor to the
24 gross receipts was sales from Southern Coal
25 Sales Corporation at [REDACTED], correct?

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1 A. Yes.

2 Q. And I think we've already determined
3 that a substantial portion of that came from
4 Algoma, is that fair to say?

5 A. I think that's fair, yes.

6 Q. Let's go back and take a look at
7 Exhibit 511.

8 The 2015 receipts from Algoma were
9 \$39,223,474.20 between November of 2015 and
10 December of 2017 -- strike that. I apologize.
11 I just screwed up the dates.

12 There were receipts of \$39,223,474.20
13 from Algoma in November and December of 2015,
14 correct?

15 A. Yes.

16 Q. So that number's [REDACTED] what
17 appears as gross receipts or sales from Southern
18 Coal Sales Corporation on the 2015 return and
19 schedule that's at Page 2276.

20 A. Yeah.

21 Q. Do you know why?

22 A. I mean, this is not an accounting
23 record, per se. This is --

24 Q. Which is?

25 A. 511.

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1 Q. Okay.

2 A. Exhibit 511 is not an accounting
3 record, per se. It's just a list of when
4 shipments were made and things like that.

5 There -- you could have some timing
6 differences on tax returns. You know, I've seen
7 that before. In the grand scheme of things, I
8 mean, [REDACTED] dollars is a lot of
9 money, but I would expect it to be in some type
10 of timing difference between when something was
11 booked and maybe it got reclassified, maybe
12 there was an adjustment, but I would assume it's
13 something along those lines.

14 Q. Okay. What could we look at to try to
15 determine the reason for the difference between
16 the receipts that SCSC received from Algoma in
17 2015 and the gross receipts or sales reported in
18 the 2015 return?

19 MR. ROBECK: Let me just object for
20 a second, because I think you used the word
21 receipts intending to describe Exhibit 511,
22 and I'm not sure if that's been established,
23 that those were actual receipts, as opposed to
24 a list of transactions that were never booked.

25 I --

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1 MR. BOLLIN: I think they have, but
2 let me go through it, just to make sure.

3 BY MR. BOLLIN:

4 Q. You account on an accrual basis.

5 Yes?

6 A. Yes.

7 Q. When you make a sale, whether or not
8 you've received the money, you report the money
9 that you billed -- you report the money that you
10 are owed?

11 A. Yes.

12 Q. Okay. So you would expect, aside from
13 maybe some small timing issues, the amount of
14 money invoices and reflected on Exhibit 509 and
15 then again on Exhibit 511 to relate pretty
16 closely to the gross relates for sales on your
17 schedule in the 2015 return, right?

18 A. Yes. But you could have had
19 adjustments to these, as we saw earlier. So
20 it could be that. Like I said, it could be a
21 timing difference. Maybe something on this --
22 because this is, basically, an Excel
23 spreadsheet, maybe something here wasn't
24 recording on here right timing-wise. And so
25 when the accountants went back and looked at it

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1 at year-end, maybe it got adjusted for the
2 books and tax return but it wasn't adjusted on
3 the spreadsheet. There's a lot of things like
4 that could happen.

5 Q. And that's what I'm asking about.

6 A. Yeah.

7 Q. So you referred to timing and
8 adjustments. Is that the same thing, or are you
9 talking --

10 A. No.

11 Q. Okay. What adjustments are you
12 referring to?

13 A. So adjustments could be sometimes
14 weights are estimated, and you don't know the
15 weights immediately. There could be a weight
16 adjustment. Sometimes you have premiums or
17 penalties, so you could have a price adjustment
18 to the original invoice. And those can happen
19 later in time, so maybe they were captured
20 before the end of the year, or maybe they
21 weren't, and then -- but the tax preparer
22 said, because that relates to a shipment that
23 occurred in that taxable year, we have to adjust
24 the price. So you do see things like that
25 happen.

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1 Timing is sometimes people just purely
2 book something, say, on December 30th for the
3 purposes of the spreadsheet, and then it turns
4 out it didn't actually load until January 5th,
5 and so you have a timing adjustment, as well.
6 So it could be a couple of different things.

7 Q. So my question from a few minutes ago
8 was, where would we look in order to determine
9 what those adjustments were, what the timing
10 issues may have been that would cause the
11 invoiced amounts in Exhibit 509 and 511 to
12 differ or exceed the gross receipts or sales
13 amount for Southern Coal Sales Corporation in
14 the year 2015?

15 A. You would have to see what,
16 specifically, the tax preparer was relying on
17 when he generated this schedule, which I would
18 expect to be the balance sheet and financial
19 records of the company.

20 Q. Okay.

21 A. I mean, he wouldn't have any other
22 information to base that on.

23 Q. So let's go back and look at the
24 financial -- I'm sorry, the balance sheet.
25 We had that before, right?

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1 A. What year is this?

2 Q. Yeah. 2015.

3 A. 2015. Okay.

4 Q. All right. So Exhibit 505.

5 A. Yeah.

6 Q. Okay. Now, this doesn't break things
7 down by entity, right?

8 A. Well, this is just Southern Coal
9 Sales --

10 Q. Oh, okay.

11 A. -- Corporation.

12 Q. Yeah. You're right. It's for
13 Southern Coal.

14 So here it's got receivables listed [REDACTED]

[REDACTED] Did I read that right? Over [REDACTED]

17 A. Oh, you're on the balance sheet?

18 Q. Yeah.

19 A. For that number, I would look at the
20 income statement.

21 Q. Okay. Let's look at the income
22 statement.

23 All right. So there we've got coal
24 sales of [REDACTED], right?

25 A. Yep. Yep.

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1 Q. All right. That's even more than what
2 was listed in the 2015 return, right?

3 A. Well, but not if you add the [REDACTED]
4 amount to the Algoma amount. Because this would
5 not be specific to Algoma. This would be for
6 Southern Coal Sales as a whole.

7 Q. Well, so is the 2015 tax return,
8 right?

9 A. Yeah. Yeah.

10 Which as you're going to see, though,
11 for general -- for revenue, you have adjustments
12 to the top-line revenue number. There's a
13 negative adjustment here of \$[REDACTED].

14 Q. Okay. What's that adjustment for?

15 A. Typically, that is, because it's not
16 premiums or penalties, that's going to be if you
17 have to take, like, a bad debt write-off on our
18 books, that shows up as general revenue.

19 On Southern Coal Sales, that's,
20 typically, what that would be, is it something
21 like a bad debt write-off.

22 Q. And do you know whose bad debt that
23 was?

24 A. I can't tell just by looking at that.

25 Q. How could we tell?

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1 MR. ROBECK: It's probably a payment
2 Algoma didn't make --

3 THE WITNESS: I mean, it's very likely
4 it is something like that, but you would look at
5 the -- you'd have to look at the general ledger
6 again.

7 BY MR. BOLLIN:

8 Q. Okay. When the five entities that
9 used to be part of Southern Coal Corporation in
10 2013 were spun off, and 2014 were spun off to be
11 their own entities in 2015, did Southern Coal
12 Corporation receive some sort of compensation
13 for that?

14 A. No. No. It was done under -- I may
15 get the code sections wrong here, but it was
16 done under Sections, I think, 351, 353 and 365
17 of the Internal Revenue Code. And if you do --
18 on a closely held business, if you do a spinoff
19 and the identical percentage is of the existing
20 parent company, it's a tax-free transaction
21 without consideration.

22 And I think they were allowed to do
23 that because they had current status as an
24 S Corporation, and after the fact they had
25 identical ownership and they were still

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1 pass-through entities.

2 (Ball Exhibit No. 517, the 2016
3 Southern Coal Corporation subsidiary's tax
4 return, was marked.)

5 BY MR. BOLLIN:

6 Q. You've been handed Exhibit 517,
7 which is the 2016 Southern Coal Corporation
8 subsidiary's tax return. Is this a true and
9 accurate copy of the tax return filed on
10 behalf of Southern Coal Corporation and its
11 subsidiaries?

12 A. Yes, I believe so.

13 MR. ROBECK: Sorry. What number was
14 this?

15 MR. BOLLIN: 517.

16 BY MR. BOLLIN:

17 Q. And do you know if you reviewed,
18 approved and signed this return?

19 A. I don't recall signing this one. I
20 don't think it was me.

21 MR. ROBECK: And, again, this is just
22 the federal?

23 MR. BOLLIN: Again, this is just
24 the federal. These are all just the federal.

25 THE WITNESS: And would it be okay if

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1 we took just a moment?

2 MR. BOLLIN: Oh, yeah. Of course.

3 Yeah, whenever you want a break, just say so.

4 THE WITNESS: Okay. I just need a
5 minute.

6 MR. BOLLIN: Okay.

7 (Recess taken.)

8 BY MR. BOLLIN:

9 Q. All right. Do you have Exhibit 517 in
10 front of you?

11 A. I do.

12 Q. All right. If you could turn to the
13 page marked 22995 within Exhibit 517.

14 A. Okay.

15 Q. Do you see it? It's the combined
16 trader business income and deductions page.

17 A. Yes.

18 Q. And, again, this is the same form
19 we've been looking at for the other tax returns
20 listing the receipts, et cetera, of Southern
21 Coal Corporation and its subsidiaries, correct?

22 A. Yes.

23 Q. Okay. Now we're down to four
24 subsidiaries whereas before we had five. Who
25 did we lose?

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1 A. Meg-Lynn Land Company and Black River
2 Coal.

3 Q. Okay.

4 A. And both -- what those two are,
5 Meg-Lynn Land is associated with the A&G Coal
6 Corporation operation. It is a lessee. And so
7 when A&G was spun off, Meg-Lynn should have gone
8 with it, and this is a correction of that.

9 And Black River Coal is the same type
10 setup with Justice Low Seam Mining. So when
11 Justice Low Seam Mining was spun off, Black
12 River Coal should have gone off at the same
13 time.

14 Q. Okay. So by 2016 those two entities
15 had been spun off, as well?

16 A. Correct.

17 Q. Now, the gross receipts for Southern
18 Coal Corporation and its subsidiaries are listed
19 as [REDACTED]; is that right?

20 A. Yes.

21 Q. And how much of that was from Southern
22 Coal Corporation -- I'm sorry, was from Nevada
23 Holdings, Inc.?

24 A. On the schedule, [REDACTED].

25 Q. Okay. Now, Nevada Holdings, Inc.,

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1 is the same thing as Southern Coal Sales
2 Corporation, right?

3 A. Yes.

4 Q. Okay. First of all, why did Southern
5 Coal Sales Corporation change its name?

6 A. I wasn't involved with that directly,
7 but Southern Coal Sales Corporation was in a
8 dispute. I think the name of the other company
9 was [REDACTED] And I think the name change was
10 a first step in the event that the entity would
11 ultimately file bankruptcy.

12 Q. Which entity?

13 A. Southern Coal Sales Corporation.

14 That, obviously, never happened, but I
15 think -- I think that was the first step in case
16 that -- that was a necessary move.

17 Q. Okay. Do you know why you'd want to
18 change the name before filing bankruptcy?

19 A. I just -- I think because Southern
20 Coal Corporation was not going to be involved,
21 it was one where only the subsidiary was going
22 to file. And to avoid any confusion with who
23 was actually in bankruptcy, it made sense to
24 change the name. But, again that was something
25 that was proactive, but it never actually

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1 culminated.

2 Q. Now, we've already gone through
3 and established that Battle Holdings, Inc., or
4 Southern Coal Sales Corporation, made sales of
5 [REDACTED] to Algoma in 2016. So how is
6 it that there were [REDACTED] gross receipts or sales
7 for Nevada Holdings, Inc., on the 2016 tax
8 return?

9 A. In just referring back to Exhibit 506,
10 the income statement for that year has a large
11 negative general revenue adjustment, and I would
12 assume somehow those two tie together, as we've
13 discussed in 2015, but I can't say for sure.

14 Q. What's a negative revenue adjustment?

15 A. It's just some type of adjustment, and
16 it's just the way our income statement works,
17 but certain types of adjustments show up as
18 either a positive or a negative in general
19 revenue, if there's not, otherwise, a specific
20 line item for it. Like, on these statements,
21 there's line items for coal sales revenue,
22 premiums and penalties, shipping royalty. And,
23 basically, general revenue is just a catchall
24 for anything that doesn't fit into one of those
25 categories. As I mentioned earlier, it could be

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1 something like a bad debt expense or something
2 like that.

3 Q. But as you sit here today, you don't
4 know what the general revenue adjustment was
5 that took you into negative territory?

6 A. I can't tell by looking at that
7 exhibit.

8 Q. And by that exhibit, you mean Exhibit
9 506?

10 A. Correct.

11 Q. Wouldn't the 2016 tax return combined
12 trader business income and deductions statement
13 include, under gross receipts or sales, all of
14 the sales made by an entity regardless of
15 whether there are any adjustments? It's
16 gross receipts and sales, right?

17 A. Yeah. But as we saw on the 2015
18 return, the way this schedule presents the
19 income statement, it's the -- what's,
20 ultimately, the -- it's what's described as
21 total revenue on the income statement is what
22 corresponds to I think it's gross revenue, I
23 lost my spot here, but what corresponds to gross
24 revenue on the tax return.

25 Q. So where it says gross receipts or

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1 sales on the tax return, it doesn't really mean
2 all receipts and sales. It means all receipts
3 and sales after adjusting for other things?

4 A. Yes. I mean, and when you compare --
5 like, 2015, for example, when you compare that
6 line item with the year-end income statement,
7 it's what shows up at total revenue on the
8 income statement.

9 Q. And in order to understand how you did
10 the calculation of general revenue for 2016, we
11 would have to look at the general ledger? What
12 would we have to look at?

13 A. Yeah. That's what would show you what
14 makes up that line item.

15 Q. Did any other entity besides Nevada
16 Holdings, Inc., report the revenue generated
17 from the sale of coal to Algoma?

18 A. I can't tell that from this document.

19 Q. Do you know who reported the revenue
20 on sales to Algoma in 2016?

21 A. If it's not on this tax return,
22 the only other place I think it could be is
23 Bluestone Energy Sales Corporation, but I don't
24 have that tax return in front of me, so I can't
25 say for sure.

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1 Q. What could I do to try to figure out
2 the answer? Where could I look?

3 A. I think I would have to see what the
4 general revenue adjustment is at the year-end
5 for 2016 to make sure that's not otherwise
6 offsetting any coal revenue. It doesn't appear
7 that it is, and then I think you would have to
8 look at, probably, the Bluestone Energy Sales
9 tax return to see if it's there.

10 Q. [REDACTED] is a pretty big general
11 revenue negative adjustment in 2016, right?

12 A. Yes.

13 Q. Do you recall what that was for?

14 A. Not specifically.

15 Q. But, again, that would be of -- that
16 information would be available on the general
17 ledger?

18 A. Yeah. It would be in the records as
19 to what created that.

20 Q. Okay. Which records?

21 A. The accounting records.

22 Q. Okay. Just because I need to be
23 a little more specific, do you know which
24 accounting records?

25 A. I don't know exactly what it is.

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1 Like I said, general revenue is a catchall for
2 anything that does not fit into one of those
3 other categories.

4 Q. And the other categories are set forth
5 below on this third page of Exhibit 506?

6 A. Yes. I think it was coal sales
7 revenue, premiums and penalties, farm revenue,
8 shipping royalty. If it's not one of those, it
9 would, by default, fall into general revenue.

10 Q. Okay. If you could take a look at
11 Exhibit 506, the third page, this is the
12 consolidated income statement for 2016?

13 A. Yes.

14 Q. The third page has a bad debt expense
15 of [REDACTED], do you see that?

16 A. Yeah.

17 Q. What was that?

18 A. I can't tell from this what that is.

19 Q. And you don't know otherwise?

20 A. I mean, it would be a write-off of a
21 bad receivable, but I don't know who that would
22 be just by looking -- or how many different
23 receivables that is.

24 Q. If you could go back to Exhibit 511,
25 please.

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1 A. Okay.

2 Q. Okay. On the last page where we've
3 totaled up all the sales, for 2016 we came up
4 with a total of [REDACTED], correct?

5 A. Yes.

6 Q. Okay. And when we were just looking
7 at Exhibit 506, third page, bad debt expense,
8 that's [REDACTED], right?

9 A. Yes.

10 Q. So according to Exhibit 506 Page 3,
11 you had \$[REDACTED] worth of bad debt expense
12 on \$[REDACTED] worth of sales?

13 A. That wouldn't have to be from the
14 same year. I mean, you could be writing off
15 something from a prior year.

16 Q. Okay.

17 A. So you can't specifically say it only
18 relates to that.

19 Q. So if we want to find out -- how do I
20 find out what that bad debt expense was for?

21 A. It would be in the general ledger.

22 (Ball Exhibit No. 518, a document
23 Bates Numbered SE-ESAL-7308 through 7360, was
24 marked.)

25 BY MR. BOLLIN:

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1 Q. I've handed you Exhibit 518, which
2 encompasses documents SE-ESAL-7308 through 7360.
3 These are invoices received by Algoma from
4 Southern Coal Sales Corporation relating to
5 the coal purchased pursuant to the original
6 agreement, the amending agreement and term
7 sheet -- actually, not the term sheet, up
8 through the amending agreement.

9 First of all, do you recognize the
10 invoices? Have you ever seen these before?

11 A. I haven't gone through every single
12 one of them, but, yeah, I mean, they generally
13 appear to be our form of invoice that we use.

14 Q. Okay. And then if you'll go to
15 Page 7339 within this Exhibit 518, you'll see
16 that the invoices starting April 29 of 2016 are
17 from Bluestone Energy Sales Corporation. Do you
18 see that?

19 A. Yes.

20 Q. Do you know why that change in form
21 was made?

22 A. I think it ties to the Carter Bank
23 conversation we had earlier. I think we were
24 trying to qualify these invoices and receivables
25 for financing purposes under the Carter Bank

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1 Bluestone Energy Sales line of credit to, you
2 know, basically, create access to cash for
3 operations.

4 Q. And that -- that didn't work out for
5 you?

6 A. I mean, it just wasn't quite what we
7 had hoped.

8 Q. The wire instructions actually sought
9 payment to a Bluestone energy account, correct?

10 A. On some of them, and on some of the
11 Bluestone Energy Sales ones it's Southern Coal
12 Sales.

13 Q. Okay. In any case, the payments were
14 always made to a Southern Coal Sales Corporation
15 account number, right?

16 A. Yes.

17 Q. Did Bluestone Energy Sales Corporation
18 assume the contract within -- within the
19 company? Did it take over the contract?

20 A. That was our intention, but I don't
21 think that ever happened.

22 I think it was a little different than
23 the utility contracts where they were willing to
24 start paying into the Bluestone energy sales
25 bank account. In this instance, Algoma only

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1 paid the Southern Coal Sales bank account. So
2 I don't think there was no -- I don't think we
3 ever completed an internal assignment of the
4 contract.

5 Q. Okay. But after the money would be
6 received from Algoma, it would, nonetheless, be
7 transferred out almost immediately to Bluestone
8 Energy Sales Corporation and other
9 Justice-related entities, correct?

10 MR. ROBECK: Objection; form.

11 THE WITNESS: Yeah. As we
12 discussed earlier, to pay back loans that had
13 been previously made.

14 BY MR. BOLLIN:

15 Q. And it was accomplished in such a way
16 as to leave the account balance at [REDACTED] or [REDACTED]
17 [REDACTED] every month?

18 A. As the money came in, it -- it --
19 almost all it have always went back out.

20 Q. Who prepared the invoices that were
21 sent to Algoma?

22 A. Typically, either Summer Harrison or
23 Janet Ransom would do that.

24 Q. Do you know whose decision it would
25 have been to change the invoices from Southern

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1 Coal Corporation -- Sales Corporation to
2 Bluestone Energy Sales Corporation?

3 A. I think Jay Justice would have
4 instructed Summer to have that done.

(Ball Exhibit No. 519, the 2017 return
for Southern Coal Corporation, was marked.)

7 | BY MR. BOLLIN:

8 Q. Is Exhibit 519 the 2017 return for
9 Southern Coal Corporation?

10 A. Yes.

11 Q. If you could turn to Page 22921, going
12 back to that consolidated report we've been
13 looking at for the other tax returns, --

14 A. Okay.

15 Q. -- this one's a little hard to read,
16 but is there any gross receipts reported for
17 Nevada Holdings, Inc.?

18 A. No.

Q. Because I can't read that page too well, let me go back to the first page of the actual return, which is Page 22904.

22 A. Okay.

23 Q. The combined revenue for Southern Coal
24 and its subsidiaries for 2017 was [REDACTED]; is
25 that right?

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1 A. Yes.

2 Q. Okay. Is this during the time
3 period that Southern Coal Corporation and its
4 subsidiaries became inactive?

5 A. Yeah. None of these companies were
6 operating in 2017.

7 Q. I'm going to jump around a little bit
8 between the tax returns for a minute here, if
9 you could put them in front of you. I'm going
10 to start with 2014.

11 If you go to the -- it's Page 22560,
12 please, --

13 A. Okay.

14 Q. -- what was the rent expense for
15 Southern Coal Sales -- I'm sorry, Southern
16 Coal Corporation in 2016 -- I'm sorry, 2014?

17 A. Can you point me to a line item on
18 that? I'm not seeing it.

19 Q. Sure. I think it's 11. I don't have
20 it in front of me.

21 A. Zero.

22 MR. ROBECK: This is for Southern Coal
23 Corporation, right?

24 MR. BOLLIN: Yeah. Southern Coal
25 Corporation. The 2014 return for Southern Coal

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1 Corporation.

2 BY MR. BOLLIN:

3 Q. And this includes all the subsidiaries
4 including Southern Coal Sales Corporation,
5 correct?

6 A. Yes.

7 Q. So neither Southern Coal Corporation
8 or its subsidiaries paid any rent in 2014?

9 MS. BYROADE: Objection.

10 THE WITNESS: Not -- I mean, not as
11 it's categorized on a tax return.

12 BY MR. BOLLIN:

13 Q. Is there another kind of rent that
14 they paid?

15 A. Yeah. I mean, like, coal lease, rent
16 and/or royalties. You know, when you're not
17 mining, you still have to pay a minimum lease
18 amount. I mean, in coal leases, they don't
19 always call it rent. I don't know where that
20 gets picked up on a tax return, but as it gets
21 characterized for a tax return, Line 11 has
22 zero.

23 Q. Okay. If you could go to Page 22598
24 of that same return, --

25 A. Okay.

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1 Q. -- Line 11, that indicates that none
2 of the entities pays rent, right?

3 A. Yeah. As it's categorized on a tax
4 return, that line is [REDACTED].

5 Q. Okay. And Southern Coal Sales
6 Corporation doesn't own any property or any land
7 or buildings, right?

8 A. No.

9 Q. Okay. Southern Coal wasn't paying for
10 office space or for any of its employees to use
11 office space, correct?

12 A. I can't say that for sure. I mean,
13 there is -- from time to time, there have been
14 intercompany charges. In this specific time
15 period, I can't say whether or not, but
16 companies have made charges intercompany for
17 what some people refer to as management fees
18 and things like that.

19 Q. How would we know about those
20 management fees that you're describing?

21 A. It would show up as an intercompany
22 charge.

23 Q. Where?

24 A. Same place we've been talking
25 about all day. It would be in the intercompany

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1 payable or receivable on the balance sheet, and
2 then for the detail that you've been asking
3 about that would be shown on the intercompany
4 summary that would be generated from the general
5 ledger.

6 Q. But in 2014, at least, you didn't
7 report any rents paid on behalf of any Southern
8 Coal Corporation entity, correct?

9 A. I think, for the third time, Line 11
10 on the tax return says [REDACTED]

11 Q. Okay. Well, you were qualifying
12 it a second ago, so I just wanted to make sure.

13 A. I have said, unequivocally, every
14 time, that Line 11 says [REDACTED] on the tax return.

15 Q. You know of no rents, you think there
16 may have been some charges, you don't know,
17 those would be in the ledger?

18 A. I don't know if there were any charges
19 or not.

20 Q. Okay. The 2015 to 2016 tax returns
21 also showed [REDACTED] rent expense for Southern Coal
22 and its subs?

23 A. I don't know.

24 Q. We can go through it, if you'd like.

25 A. Yeah. What exhibits are those?

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1 Q. I'm sorry?

2 A. What exhibits are those?

3 Q. Sure. The 2015 tax return is --

4 MR. ROBECK: 516.

5 BY MR. BOLLIN:

6 Q. -- 516. Take a look at Line 11, if
7 you will.

8 A. Yeah. Line 11 says [REDACTED]

9 Q. Okay. The 2016 tax return is Exhibit
10 517.

11 A. Line 11 says [REDACTED].

12 Q. Okay.

13 So the Southern Coal Corporation and
14 its subs weren't paying for office space in 2014
15 through 2016, right?

16 MR. ROBECK: Objection.

17 THE WITNESS: Yeah. Can you ask that
18 again?

19 BY MR. BOLLIN:

20 Q. In 2014 through 2016, Southern Coal
21 Corporation and its subsidiaries were not
22 paying for rent for office space, correct?

23 A. I mean, I think that's different than
24 what you asked earlier. I can't tell from that
25 if Southern Coal Corporation was -- because

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1 Southern Coal Corporation, I think, did have
2 some assets. You've asked me about Southern
3 Coal Sales not having assets, which I do agree
4 with you would imply, if they had office space,
5 they would have to rent it. But I can't say
6 from looking at the face of that if Southern
7 Coal -- because each mine has mine offices,
8 I mean, I just can't say by looking at that
9 document whether Southern Coal, or any of its
10 subsidiaries as you asked the question, doesn't
11 have any of its own offices.

12 Q. Okay. My question really was just
13 rents. Did Southern Coal or any of its
14 subsidiaries pay rent for offices between
15 2014 and 2016?

16 A. No. And, like I said, I -- I think
17 it's possible, though, at some of the mine
18 operations you have mine offices. And if
19 Southern Coal owned those, which is possible,
20 it wouldn't show up in rents. That's the only
21 point I was trying to make.

22 Q. Okay. That's fine.

23 And where would you look to find out
24 if Southern Coal Corporation owned offices at
25 mine operations?

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1 A. It would show up as a fixed asset on
2 their balance sheet.

3 Q. And the balance sheets that we've
4 seen for Southern Coal Sales Corporation don't
5 provide that level of detail. Do the balance
6 sheets for Southern Coal Corporation show that
7 level of detail identifying what the fixed
8 assets are?

9 A. I mean, it would show whether or not
10 they had fixed assets.

11 Q. Okay.

12 A. And if you wanted to see what those
13 fixed assets are, you would have to look at the
14 general ledger.

15 Q. Can you look at the 2017 tax return,
16 which is Exhibit 519? Now, on this one, it
17 shows Southern Coal Corporation and its
18 subsidiaries paid rents of \$ [REDACTED].

19 Did I get that right?

20 A. Yes.

21 Q. And do you know what that rent expense
22 is for?

23 A. No.

24 Q. If you look on the schedule on
25 Page 22921, all of that amount is allocated to

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1 an entity identified as subsidiary Southern Coal
2 Corporation.

3 MR. ROBECK: 22921?

4 MR. BOLLIN: Yeah.

5 BY MR. BOLLIN:

6 Q. Do you think that means to allocate
7 the rent to Southern Coal Corporation?

8 A. I don't know what that means.

9 Q. All right. No rent is allocated to
10 Nevada Holdings, Inc., right?

11 A. Correct.

12 Q. Did Southern Coal Corporation have any
13 revenue in 2017?

14 A. I think you asked this earlier, but
15 [REDACTED].

16 Q. Okay. So the rent attributed to
17 Southern Coal Corporation in 2017 exceeded its
18 revenue?

19 A. The rent that is claimed on
20 Line 11 exceeds its revenue by, I guess,
21 roughly, [REDACTED]. I don't agree with your
22 characterization of it, though. Because I
23 think if it was attributed to Southern Coal
24 Corporation, it would have to show up on both
25 sides of the equation.

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1 Q. What do you mean by that?

2 A. Maybe I misunderstood what you're
3 saying, but I thought you said it was rent
4 attributed to Southern Coal Corporation.

5 Q. It appears to be in that form we were
6 looking at on Page 22921.

7 A. And you mean as an expense?

8 Q. Yeah.

9 A. Oh, okay. I misunderstood what
10 you were saying. I thought you said paid to
11 Southern Coal Corporation.

12 Q. No, paid by.

13 It does raise the question, though, of
14 who they paid it to. Do you know who they paid
15 the rent to?

16 A. No. No. I mean, I don't think it's
17 uncommon for -- if companies don't have revenue,
18 I think companies struggle to pay rent every
19 day. I think it's where the saying comes from.

20 Q. Well, this is the first year they
21 appear to have paid rent, and yet they didn't
22 have revenue.

23 A. Correct.

24 Q. Okay. If you could take a look at the
25 2013 return, Exhibit 514, first page of the

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1 return itself, which is 22309, do you see it?

2 A. Yes.

3 Q. Okay. It identifies compensation of
4 officers in Southern Coal Corporation at
5 [REDACTED]. Did I read that correctly?

6 A. What line item?

7 Q. Seven.

8 A. Yes.

9 Q. And if you go ahead to Page 22322 of
10 the same exhibit, this is the compensation of
11 officers form?

12 A. Yes.

13 Q. Okay. And this identifies
14 compensation for yourself, Jim Justice, III,
15 and James T. Miller, correct?

16 A. Yes.

17 Q. Was that your total compensation for
18 2013, or did you receive compensation from other
19 entities, as well?

20 A. That would have been my total.

21 Q. Was that James Justice, III's,
22 total compensation in 2013, or did he receive
23 compensation from others?

24 A. Possibly.

25 Q. Do you know if that was James

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1 T. Miller's total compensation in 2013?

2 A. That would not have been James

3 T. Miller's total compensation.

4 Q. Do you know where else he received
5 compensation from in 2013?

6 A. Greenbrier Hotel Corporation.

7 Q. And is it possible that James C.
8 Justice, III, also received compensation from
9 another entity that year?

10 A. Yes.

11 Q. Who determined your wages or
12 compensation in 2013?

13 A. James C. Justice, III, and, I guess,
14 technically, James C. Justice, II, but I think
15 that it would have predominantly been James C.
16 Justice, III.

17 Q. Okay. I want to look at the same line
18 on the 2014 return, which I believe is Exhibit
19 515.

20 And starting on the first page the
21 compensation of officers, Line 7, that line's
22 [REDACTED] on the 2014 return, and that means [REDACTED].

23 The officers weren't compensated at all in 2014,
24 is that accurate?

25 A. Line 7 says [REDACTED] yes.

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1 Q. And do you believe that to be true the
2 officers were compensated [REDACTED] by Southern Coal
3 Corporation and its subsidiaries in 2014?

4 A. Yes. I have no reason to think that
5 this isn't accurate.

6 Q. You were still an officer in 2014 for
7 Southern Coal Sales Corporation, right?

8 A. Yes.

9 Q. Where did you receive your
10 compensation that year in 2014?

11 A. I believe Justice Management Services.

12 Q. Have we talked about them yet today?

13 A. It no longer exists.

14 Q. Okay. It sounded like a new one.

15 A. Yeah. No. It no longer exists.

16 Q. Who owned Justice Management Services?

17 A. I don't recall its ownership.

18 Q. Was its ultimate ownership the Justice
19 Family?

20 A. Yes.

21 Q. Were you paid by that entity in any
22 other years?

23 A. In 2015, as well.

24 Q. Okay. Do you know who paid the
25 compensation of the other officers of Southern

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1 Coal Corporation and its subsidiaries in 2014?

2 A. I think it would have been Justice
3 Management Services, as well.

4 Q. That's your expectation or -- I don't
5 want you to guess.

6 A. I mean, typically, they would be paid
7 by the same people I would be paid by.

8 Q. But in 20 --

9 A. But that is a guess.

10 Q. And, I mean, in 2013, they were paid
11 at least a part of their compensation by the
12 same entity, Southern Coal Corporation, right?

13 A. Right.

14 Q. But it's quite possible, if not
15 probable, they received the bulk of their
16 compensation from other Justice entities in
17 2013?

18 MR. ROBECK: Objection; form

19 THE WITNESS: I know that Terry Miller
20 did. I don't know on Jay Justice.

21 BY MR. BOLLIN:

22 Q. Okay. Do you know if Jay Justice
23 received distributions or dividends in 2015?

24 A. No dividends.

25 Q. Is a distribution different than a

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1 dividend, in your mind?

2 A. Not in my mind.

3 Q. Okay.

4 A. Well, it typically de -- to me it
5 denotes noncash.

6 Q. Mm-hmm.

7 A. But they're, effectively, the same
8 thing to me.

9 Q. Do you know if Jay Justice has
10 received dividends or distributions
11 in 2013, 2014, 2015 or 2016?

12 A. He would not have.

13 Q. Okay. Do you know if he did in 2017?

14 A. He wouldn't have then either.

15 Q. How about Jim Justice for the same
16 years?

17 A. No dividends or distributions.

18 Q. You said that you were paid -- what's
19 the management entity?

20 A. Justice Management Services.

21 Q. And they paid you in 2014 and 2015?

22 A. The first three months of 2015.

23 Q. Okay.

24 A. That -- when I moved to Greenbrier
25 Hotel Corporation after the death of the chief

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1 operating officer, --

2 Q. Sure.

3 A. -- I went on their payroll.

4 Q. Okay. That's when you went to work
5 for Greenbrier, was in 2015?

6 A. Yeah. April of 2015.

7 Q. Did Southern Coal Corporation and its
8 subsidiaries report any compensation of its
9 officers in 2015?

10 A. No.

11 Q. Did Southern Coal Corporation and its
12 subsidiaries report compensation of any officers
13 in 2017 -- I'm sorry, 2016?

14 A. No.

15 Q. Did Southern Coal Corporation and its
16 subsidiaries report any officer compensation in
17 2017?

18 A. No.

19 Q. Aside from yourself, do you know how
20 any of the officers of Southern Coal Corporation
21 and its subsidiaries were compensated in the
22 years 2014 through 2017?

23 A. I know that Terry Miller received the
24 majority of his salary from Greenbrier Hotel
25 Corporation, and he received a smaller amount

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1 from Southern Coal and then Justice Management
2 Services.

3 Q. Okay.

4 A. I do not know how Jay Justice and Jim
5 Justice were compensated.

6 Q. Turning back to Exhibit 514, which
7 is the 2013 return -- I believe it's an amended
8 return, correct?

9 A. It's checked as an amended return.

10 Q. Okay. And you've got the subsidiary
11 -- qualified subsidiary elections at the
12 beginning of this document?

13 A. Yes.

14 Q. Okay. Now, I was looking at
15 those, and they're prepared for Southern Coal
16 Corporation, and then they have the name of the
17 various subsidiaries. First of all, you
18 prepared these, didn't you?

19 A. I did not, no.

20 Q. Oh, okay.

21 You were identified as the officer or
22 legal representative from the IRS may call for
23 more information. Did they tell you that?

24 A. I don't recall from five years ago,
25 so I --

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1 Q. Sure.

2 A. -- I'm sure Brian would have alerted
3 me to that, but I don't recall a specific
4 conversation.

5 Q. On these forms there's a provision
6 for name of common parent, and it would be
7 common between Southern Coal Corporation and the
8 subsidiary on each form, and on each form it's
9 identified as James C. Justice Companies, Inc.
10 Do you see that?

11 A. Yes.

12 Q. So I think earlier we identified them
13 as -- I'm sorry, I'm looking at my chart, and
14 I'm just having a hard time putting it together.

15 James C. Justice companies Inc., is
16 that the parent of Bluestone Resources?

17 A. No.

18 MR. ROBECK: We're also talking about
19 a different time period now.

20 MR. BOLLIN: Okay.

21 MR. ROBECK: You're looking at a
22 2013 tax return, two years prior to the date we
23 agreed upon and all the other questions about
24 the corporate structure was focused on 2016, and
25 I think maybe a few questions about 2015 and

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1 2017.

2 BY MR. BOLLIN:

3 Q. So how was James C. Justice Companies
4 Inc., related to Bluestone Resources, Inc.?

5 A. It has common ownership in that the
6 Justice family owns James C. Justice Companies
7 Inc. And for these entities that you see these
8 forms, prior to 2013 they were owned by James
9 C. Justice Companies, Inc. In 2013, in a
10 similar spinoff to what we were discussing
11 earlier, James C. Justice Companies, Inc., spun
12 those off to Southern Coal Corporation. And
13 that was to eliminate any coal mining within the
14 James C. Justice Companies Inc., structure.

15 Certain banks that are willing to
16 finance agriculture do not want to finance any
17 coal exposure whatsoever, so we removed all
18 of the coal companies from James C. Justice
19 Companies, Inc.

20 Q. When we were going through the bank
21 statements earlier, you saw a number of deposits
22 from Justice Family Farms to Southern Coal
23 Corporation -- Southern Coal Sales Corporation's
24 accounts. Why did those transfers occur?

25 A. It would just be another example of

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1 what we talked about, intercompany loans between
2 companies, or repayment of intercompany loans.

3 Q. If you could take a look at the
4 2014 return in Exhibit 515 back at the combined
5 trader business income and deduction statement,
6 which is on Page 22598, --

7 A. Okay.

8 Q. -- I noticed on this page there's a
9 advertising expense reported of [REDACTED], and
10 -- I'm sorry, [REDACTED] of those dollars are for
11 Southern Coal Sales Corporation. Do you know
12 what that advertising was for?

13 A. I can't tell from this what that's
14 for.

15 Q. Do you know what kind of expenses go
16 into this line item, advertising?

17 A. I mean, I -- I think exactly
18 what would you expect to go into it, I mean,
19 especially given that it's on a tax return that,
20 you know, has very specific rules as far as what
21 can be deducted for marketing and advertising.

22 Q. What kind of marketing and advertising
23 does Southern Coal Corporation do?

24 A. It will sponsor various events. Back
25 then it would -- I mean, it could be anything,

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1 but it would sponsor little league signs at
2 local little leagues, it sponsored youth golf
3 events. I don't think any of those rise to the
4 number that's on there. I don't know what makes
5 up that number, but that's, typically, the type
6 of advertising they did.

7 MR. BOLLIN: Let's take a five-minute
8 break.

9 MR. ROBECK: Okay.

10 | (Recess taken.)

11 BY MR. BOLLIN:

12 Q. I'm going ask you to take a look at
13 the 2015 tax return, Exhibit 516.

14 A. Okay.

15 Q. Turn to Page 22767, please.

16 A. Okay.

17 Q. In 2015, what were the combined
18 costs of goods sold for Southern Coal and its
19 subsidiaries?

20 MR. ROBECK: What page are we looking
21 at? I'm sorry.

22 | MR. BOLLIN: 22767.

23 THE WITNESS:

24 BY MR. BOLLIN:

Q. And how much of that came from

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1 Southern Coal Sales Corporation?

2 A. [REDACTED]

3 Q. Okay. If you could turn to Page
4 22771, there's a breakdown of those other costs
5 -- I'm sorry. I've got the wrong page. It's
6 22767, so it's the same page -- nope. I'm
7 sorry. I had it right the first time. I'm
8 looking at other expenses. If you go to Page
9 22771, it's the breakdown of other expenses as
10 set forth on Page 22767, and it shows --

11 MR. ROBECK: Under costs. That's
12 technically not under expenses. It's under
13 costs.

14 MR. BOLLIN: Okay.

15 BY MR. BOLLIN:

16 Q. Costs of goods sold. All right.
17 Well, in any case, on Page 22771,
18 there's a schedule of other costs, and under
19 Southern Coal Sales Corporation it's got an
20 other expenses category. And it allocates
21 [REDACTED] to Southern Coal Sales Corporation
22 as an other expense.

23 Do you know or do you know where we
24 could find the basis for those other expenses?

25 A. I can't tell from this what that is.

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1 I mean, that, generally, is a catchall for
2 something that doesn't specifically fit in
3 one of those other categories.

4 Q. Yeah. Do you know what's included in
5 other expense?

6 A. Like I said, my understanding is
7 it's a catchall for something that doesn't
8 specifically meet one of these other categories
9 on this page, and I can't tell from looking at
10 this.

11 Yeah, I can't tell looking at the
12 income statement. I know the general expense on
13 the income statement is [REDACTED]. Right above
14 it is freight expense export, and so it could
15 possibly be a combination of freight expense in
16 that. But I just can't tell by looking at it.

17 Q. Okay. Do you know what documents I'd
18 have to review in order to determine what the
19 other expense was as identified for Southern
20 Coal Sales Corporation on Page 22771?

21 A. I guess you would just have to see
22 what -- what the tax preparer combined off of
23 the year-end books to get into other expenses.
24 I can't tell from the face of it.

25 Q. Okay. Turning to the 2016 tax return,

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1 Exhibit 517, I want to look at the costs of
2 goods sold which is set forth on Page 22995.

3 Are you there?

4 A. Yeah.

5 Q. Okay. First of all, this is the
6 -- this is 2016, this is the year that Southern
7 Coal Corporation and subsidiaries reported [REDACTED]
8 gross receipts or sales from Southern Coal
9 Corporation or Nevada Holdings, Inc., right?

10 A. Correct.

11 Q. Similarly, there is [REDACTED]
12 allocated to cost of goods sold for Nevada
13 Holdings, Inc., or Southern Coal Corporation?

14 A. Correct.

15 Q. And this is the year that Southern
16 Coal entered into and supplied coal -- entered
17 into agreements and supplied coal to Algoma,
18 correct?

19 A. Correct.

20 Q. And I think we established earlier you
21 don't know why the gross receipts or sales or
22 the costs of goods sold aren't identified in the
23 tax return in 2016?

24 A. I believe they're on the Bluestone
25 Energy Sales tax return, but without having that

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1 in front of me I can't say that definitively.

2 Q. Okay. Thank you.

3 If you could turn two pages to Page
4 22998, this is other deductions. Are you on
5 that page?

6 A. Yes.

7 Q. Okay. There's an entry for freight
8 coal under Nevada Holdings, Inc. It says,
9 expenses of [REDACTED]. Do you see that?

10 A. Yes.

11 Q. Do you know how Nevada Holdings, Inc.,
12 would have expenses for freight coal in a year
13 when it reported [REDACTED] gross receipts or sales or
14 costs of goods sold?

15 A. No.

16 Q. I have the same question with regard
17 to loading costs of [REDACTED]. Do you know
18 why that's recorded for Nevada Holdings, Inc.?

19 A. No.

20 Q. Is it possible that this cost is
21 related to one of the other Southern Coal
22 Corporation entities?

23 A. It's possible. I -- again, I think
24 the revenue is -- is, more than likely, on the
25 Bluestone Energy Sales tax return, and I think

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1 this, probably, is an error and it should have
2 -- if the revenue went over to Bluestone Energy
3 Sales, the -- the cost of goods should have, as
4 well. But I can't say that for sure, but none
5 of these other entities were operating, so I
6 don't think it would have been any of them.

7 Q. Okay. Understood.

8 Next I want to look at the inventory
9 that was reported on this same tax return. If
10 you could go to Page 22971, there's a Schedule L
11 there called Balance Sheets Per Books.

12 A. Okay.

13 Q. Do you see that? Okay. There's a
14 Line 3 called inventories.

15 MR. ROBECK: Did you say Schedule L?

16 MR. BOLLIN: Yeah.

17 MR. ROBECK: On Page --

18 MR. BOLLIN: 22971.

19 MR. ROBECK: -- 22971 of Exhibit 517?

20 MR. BOLLIN: That's all right.

21 MR. ROBECK: Oh, I see. I was looking
22 at Schedule K at the top.

23 MR. BOLLIN: Oh, sure. Okay.

24 BY MR. BOLLIN:

25 Q. So the third line, it's called

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1 inventories, it says, end of tax year,
2 Southern Coal Corporation and subsidiaries had
3 inventories of [REDACTED].

4 Do you see that?

5 A. Yes.

6 Q. What are those inventories?

7 A. Typically, inventories are things like
8 fuel and, like, the blasting supplies, powders
9 and things like that and coal inventory.
10 There's not enough detail from the tax return
11 for me to tell you exactly what those are.

12 Q. Okay. If you could turn to Page
13 23016, same document, do you see it?

14 A. Yes.

15 Q. Okay. Now, this is called Combined
16 Ending Balance Sheet, and, again, Line 3 is
17 entitled, Inventories. Do you see that?

18 A. Yes.

19 Q. Actually, it might be Line 4, my
20 apologies. The combined amounts is [REDACTED],
21 just as it was on the prior page, right?

22 A. Yes.

23 Q. And [REDACTED] worth of that is
24 attributed to Nevada Holdings, Inc. Do you see
25 that?

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1 A. Yes.

2 Q. I'm having a hard time understanding
3 what Nevada Holdings, Inc.'s, inventories would
4 have been. It didn't own coal, right?

5 A. Not -- I mean, not in the sense
6 of coal reserves, and it doesn't mine coal.
7 It owns coal that it buys and resells.

8 Q. So do you know what this inventory of
9 ██████████ for Nevada Holding Company -- I'm
10 sorry, Nevada Holdings, Inc., was in 2016?

11 A. I can't tell from this what that is.

12 Q. Okay. Do you know where we could look
13 to figure that out?

14 A. General ledger on the -- I don't
15 recall what the balance sheet said for that same
16 year.

17 Yeah, see, I don't know, because
18 there's no inventory on the balance sheet.

19 Q. That was going to be my next question.

20 A. So I -- I don't know -- I don't know
21 what the -- I'm sorry. I'm looking at 20 -- the
22 inventory question was 2015 or 2016?

23 Q. 2016.

24 A. 2016. All right. And I've laid that
25 out, so we're good. So I'm looking at the 2016

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1 balance sheet and it shows no inventory. So I'm
2 not sure what that discrepancy would be, but
3 that's probably one that we would have to look
4 at whatever information the tax preparer was
5 relying on.

6 Q. In the 2017 tax return, the
7 ██████████ inventory appears again on the
8 balance sheet, which is that Page 22927.

9 MR. ROBECK: Can you repeat the
10 question, please?

11 (Referred-to testimony read back.)

12 BY MR. BOLLIN:

13 Q. I'm having a hard time reading this
14 page. Is yours better than mine?

15 MR. ROBECK: Yeah. I'm having a hard
16 time reading it, too. Do you know what line
17 you're talking about?

18 MR. BOLLIN: It's the fourth line
19 down, same as all the others. You can kind of
20 make it out. It says inventories.

21 MR. ROBECK: Oh, it's Number 3?

22 MR. BOLLIN: Yeah. It is.

23 MR. ROBECK: Okay.

24 BY MR. BOLLIN:

25 Q. And then under Nevada Holdings Inc.,

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1 it says [REDACTED].

2 I can make it out on mine. Can you
3 make it out on yours?

4 A. I think that's right.

5 Q. That's the same number we just saw on
6 the 2016 return.

7 A. I can't see the middle three numbers,
8 but I --

9 Q. Yeah. I'll tell you what, I'll give
10 you this one to look at next to it. It will
11 help you.

12 MS. SCHULTZ: It's the same thing
13 printed but in portrait versus landscape. It's
14 easier to read than that one.

15 MR. ROBECK: Okay.

16 BY MR. BOLLIN:

17 Q. All right. So the inventory carried
18 over to the 2017 initial balance is consistent
19 with the 2016 balance statement, right?

20 A. Correct, yes.

21 MS. SCHULTZ: Should we attach these
22 two together for the record maybe?

23 MR. BOLLIN: Sure. Is that one that
24 can be attached?

25 MR. ROBECK: Well, why don't you just

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1 read the Bates Number. We can look it up.

2 MR. BOLLIN: Yeah. Well, same Bates
3 Number, just a different copy.

4 MR. ROBECK: Okay. So it's Bates
5 Number -- 022903 is the beginning Bates Number.

6 MS. SCHULTZ: Right. Through 22949.

7 MR. BOLLIN: Yeah. It's just a
8 legible copy. That's all.

9 Tell you what, let's go ahead and mark
10 it whatever that is, A, so that we have a
11 legible copy on the record.

12 What's that one?

13 THE WITNESS: 519.

14 MR. BOLLIN: Okay. So this will be
15 519A.

16 (Ball Exhibit No. 519A, the 2017
17 return for Southern Coal Corporation printed in
18 portrait format, was marked.)

19 BY MR. BOLLIN:

20 Q. Okay. So the number here is -- the
21 amount of inventory is [REDACTED] is that
22 right?

23 A. Can you give me the page number again?

24 Q. Yeah.

25 A. I was flipping through this.

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1 Q. No worries. It's 22927, --

2 A. Okay.

3 Q. -- or is it six? Lost track. No.
4 It's seven. Third line down.

5 A. Yes. For Nevada Holdings,
6 specifically, it's [REDACTED].

7 Q. Okay. And the combined total is?

8 A. [REDACTED].

9 Q. All right. If you could turn to
10 Page 22909, again, this is in the 2017 return --

11 A. Okay.

12 Q. -- and, again, we see that number,
13 [REDACTED] as the inventory at the beginning
14 of the year, correct?

15 A. Yes.

16 Q. Okay. And, finally, if you could go
17 to 22933, this is probably one of those you need
18 to read the clearer copy on -- do you have a
19 copy you can read?

20 A. Yes.

21 Q. Okay. You're doing better than me.

22 What are the other costs that Nevada
23 Holdings reports for 2017?

24 A. [REDACTED].

25 Q. What are those other costs, do you

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1 know?

2 A. I can't tell from this.

3 Q. Where would you look in order to try
4 to determine what the [REDACTED] of other costs
5 were?

6 A. The year-end income statement. And if
7 I couldn't tell from there, then the general
8 ledger.

9 Q. Pardon me a moment. I failed to put
10 the document number on it.

11 If you'll turn in the same document,
12 the 2017 return, if could you turn to Page 22941
13 to page called Statement 11, do you see that?

14 A. Yes.

15 Q. All right. There there's a -- about
16 five, six lines down, there's an inventory
17 adjustment for [REDACTED], do you see that?

18 A. Yes.

19 Q. Do you know what that represents?

20 A. Again, that would be removing
21 inventory from the books.

22 Q. But it's an adjustment. Do you know
23 why it's being adjusted?

24 A. Typically, when you have an
25 adjustment like that, it's for lack of

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1 substantiation. Typically, these weren't
2 -- these weren't audited in 2017, the books
3 weren't audited in 2017, but, I mean, that's --
4 normally when you end up with an adjustment
5 is if you can't meet the satisfaction of the
6 auditor. In this instance, where there was no
7 auditor, I don't know why it was treated as an
8 adjustment.

9 Q. Again, Southern Coal Sales
10 Corporation, or Nevada Holdings, I mean, they're
11 the same thing, right, --

12 A. Right.

13 Q. -- they weren't doing business in
14 2017, were they?

15 A. No.

16 Q. If you could turn in the 2017 tax
17 return to Page 22921, first of all, Nevada
18 Holdings, Inc., reports [REDACTED] for costs of
19 goods sold, right?

20 A. Yes.

21 Q. Do you have any idea what that could
22 be?

23 A. I don't. I thought I saw an
24 explanation for that earlier, but I may be
25 combining documents at this point. But I -- I

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1 don't know what the [REDACTED] is.

2 Q. Okay. On that same page, 22921 of
3 the 2017 return, there's a line there that
4 says other deductions, and there is an entry for
5 Nevada Holdings, Inc., of [REDACTED]. Do you see
6 that?

7 A. Yes.

8 Q. Do you have any idea what those other
9 deductions would be for?

10 A. I can't tell from this.

11 Q. Now, again, Nevada Holdings wasn't
12 operating in 2017, right?

13 A. No.

14 Q. And it had no revenue in 2017?

15 A. Not that I'm aware of.

16 Q. And it reported no revenue in 2016?

17 A. Correct.

18 Q. Do you know if these deductions belong
19 to a different entity?

20 A. I mean, just because it was idle,
21 I mean, doesn't mean it doesn't still have
22 obligations, and so, I mean, you have things
23 like this litigation and things like that. I
24 just can't tell from this, but I -- I'm -- I
25 can't say that this belongs to someone else.

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1 Q. Fair enough.

2 Not with regard to this document
3 anymore, do you know what bank account, if any,
4 Southern Coal Sales Corporation used to pay its
5 operating expenses that were reported to the
6 government in its 2016 and 2017 returns?

7 A. 2016, the first half of the year
8 the obligations would have been paid out of
9 the Wells Fargo account. The second half of the
10 year they would have been paid out of the Chase
11 account.

12 First half of 2017, they would have
13 been paid out of the Chase account. Second half
14 of 2017, I'm not sure.

15 Q. Okay. So if we're looking to identify
16 the operating expenses for Southern Coal Sales
17 Corporation in 2016 and 2017, we can look at the
18 bank statements that we've already reviewed here
19 today from Chase and from -- what was the other
20 one?

21 A. Wells Fargo.

22 Q. Wells Fargo.

23 A. For payment of those expenses. I
24 think they would have been paid out of those
25 accounts.

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1 Q. Did anyone make any payments on behalf
2 of Southern Coal Sales Corporation?

3 A. That wouldn't be typical. I mean, it
4 is possible. As we sit here, and without going
5 through those statements line by line, I would
6 expect someone to loan Southern Coal Sales the
7 money and then let them make the payment, but it
8 has happened before.

9 Q. Okay. And now that I asked the
10 question, I hadn't thought of this when I
11 asked the first one, but now that I've asked the
12 question I do recall an instance where Bluestone
13 Energy made payments to the railroad in order to
14 deliver railcars. Are you familiar with that
15 instance?

16 A. I'm aware that happened, yes.

17 Q. Okay. But it wasn't regular, but it
18 did happen on occasion?

19 A. Yes.

20 MR. BOLLIN: Okay. If you folks don't
21 mind, I'm going to hand it over to Laura to ask
22 some questions while I try to make things more
23 efficient.

24 MS. BYROADE: Sure.

25 ///

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1

EXAMINATION

2

BY MS. SCHULTZ:

3

Q. Hi, Mr. Ball, for the record, we've
met earlier today, but I'm Laura Schultz. I'm
one of the other attorneys representing Algoma
in this case.

7

I wanted to speak to you for a few
minutes about sampling.

9

A. Okay.

10

11

Q. I believe you testified earlier
this morning that you spoke to Mr. Sarver and
Mr. Lambert regarding sampling; is that right?

13

14

A. I spoke to Mr. Sarver. I read
Mr. Lambert's deposition.

15

Q. Okay. Fair enough.

16

17

Were there any other documents that
you reviewed in preparation today with respect
to sampling?

19

20

21

A. I also read some of Tim Fugit's
deposition. I read some of Steve Sarver's
deposition. I think that's it as it relates to
sampling.

23

24

25

Q. Okay. Does Southern Coal Sales have
any policies and procedures relating to sampling
the coal it sells?

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1 A. No formal policies. It's, typically,
2 dictated by each contract that we enter into,
3 and we follow whatever that particular agreement
4 requires.

5 Q. And so would it be the operator of
6 the particular mine that the coal is coming from
7 that would be in charge of sampling, then?

8 MR. ROBECK: Objection; form.

9 THE WITNESS: Usually the sampling is
10 either done by an automatic sampler or it's done
11 by car-top sampling. We have none in play here,
12 but, for example, we have a few load-outs where
13 the coal is loaded with end-loaders, and so that
14 gets to be a little bit of a different process.
15 But, yeah, it would be on a mine-by-mine basis,
16 and it would be whoever's in charge of the
17 load-out at the mine.

18 BY MS. SCHULTZ:

19 Q. And how do the people that are working
20 the load-out for a particular shipment know what
21 sampling procedures need to be followed in order
22 to meet the contractual obligations of Southern
23 Coal Sales Corporation?

24 A. So, usually, it involves an automatic
25 sampler, and so they just know that the

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1 automatic sampler needs to be activated or
2 operational. And they coordinate with the lab,
3 whoever the particular lab is, to make sure the
4 lab's there to pick up the bags that are grabbed
5 by the automatic sampler.

6 Q. Okay. I want to move for a second
7 away from sampling of the load-out. Before the
8 coal arrives -- and I'm talking about, just for
9 the purpose of these questions, coal that was
10 shipped from Southern Coal Sales Corporation
11 to Algoma in 2016, let's start with Coal
12 Mountain, --

13 A. Okay.

14 Q. -- so for those shipments, before the
15 coal reached the load-out point and was shipped
16 to Algoma, was there testing that was done on
17 that coal prior to load-out?

18 A. It's possible. We don't always test
19 coal in the -- what we call the mine pit, which
20 is where it's uncovered, but sometimes when
21 we are encountering a first cut, it's, like,
22 the first cut that you make on the side of the
23 mountain, that coal will be sampled in the pit
24 to see if it's oxidized. And once we determine
25 the limits of the oxidation, we don't,

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1 typically, test beyond that. But there is some
2 in-pit testing.

3 Q. Okay. And Coal Mountain, am I correct
4 that it produced both metallurgical coal and
5 steam coal?

6 A. Yes.

7 Q. And within a particular seam, do both
8 types of coal come out of the same seam, or are
9 they separate seams?

10 A. Typically, it's a seam-by-seam basis,
11 so we know that, like, the Number 2 gas seam is
12 always metallurgical coal. There's, like, 10
13 seams on that mountain. Normally, the further
14 down you go, the better quality the coal is
15 going to be, so the upper seams, typically, tend
16 to be steam coal. But within a seam, it's rare
17 that you would have met and steam. But you do
18 run into some oxidation, that I talked about
19 earlier, and so that could render some met coal
20 -- that oxidation could render some met coal not
21 suitable for a met coal order.

22 Q. At Coal Mountain, how did Southern
23 -- I guess I'm not sure whether it's Southern
24 Coal Sales Corporation, I'll start there, ensure
25 that, to the extent it was mining both steam

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1 coal and met coal, that that coal didn't get
2 intermingled?

3 A. So, typically, that would be more
4 Dynamic Energy as the operator.

5 Q. So the operator is doing that work?

6 A. Yeah. But the operator would keep
7 those coals segregated. Either -- there's a
8 couple ways to do it -- you can leave the steam
9 coal and/or the met coal, but if you know your
10 next three or four loadings are all steam coal,
11 you wouldn't take the met coal to the load-out
12 yet, you would leave it in the pit, and
13 vice-versa, so you could try to keep those coals
14 segregated.

15 Q. For testing that was done prior to
16 load-out, is that something Southern Coal does
17 internally or sends out to a lab?

18 A. We have the ability to do it
19 internally at some of the operations. At Coal
20 Mountain we could test for minimal things, like
21 ash. But to test oxidation and things like
22 that, you would send that out to a third party.

23 Q. What about Paragon?

24 A. Paragon would be similar. We could do
25 some limited testing at Paragon. Again, that

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1 would be more for ash. But if you were wanting
2 to see if the coal was oxidized or not, which
3 was not an issue at Paragon, as much as it could
4 be at Coal Mountain, but normally that coal
5 -- or that sample would be sent out to a third
6 party.

7 Q. Do you know which third party was
8 performing that service for Coal Mountain in
9 2016?

10 MR. ROBECK: If it was.

11 MS. SCHULTZ: If it was ... I
12 thought he testified that they couldn't test for
13 oxidation and they needed to, from time to time,
14 test for oxidation?

15 MR. ROBECK: He said they would test
16 before load-out, occasionally. He didn't say
17 whether it was or was not.

18 BY MS. SCHULTZ:

19 Q. Okay. To your knowledge, did you test
20 for oxidation at Coal Mountain in 2016?

21 A. I don't know. It is possible, though.

22 Q. Okay. Do you know what company would
23 have provided that testing services in 2016?

24 A. Not specifically in that timeframe,
25 because I don't know if we did or didn't.

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1 Q. Okay. Would Southern Coal
2 maintain records of that sort of testing, or
3 the Justice-owned company that owned the mine at
4 that time?

5 A. Possibly, but that analysis
6 wouldn't be used for any other purpose, other
7 than determining whether it was oxidized or not.
8 So I don't know that we would. I think once the
9 job got the report back that either it was or
10 wasn't, I think that there's really not much
11 more need for it at that point.

12 Q. Okay. So as you sit here today you're
13 just not sure whether --

14 A. Not in that time period.

15 Q. Okay. Now, you testified previously
16 there was an automatic sampler that was in use
17 at Coal Mountain; is that correct?

18 A. That is correct, yes.

19 Q. Okay. Do you know, was that sampler
20 certified as complying with ASTM standards?
21 And I'm going to start and say, has it ever been
22 certified, and then ask you particularly with
23 respect to in 2016?

24 A. Yes, I do believe it has been
25 certified before.

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1 Q. And when was it certified?

2 A. We don't know the specific date. It's
3 prior to 2016. It may be significantly prior to
4 2016. In talking to Mr. Sarver, it wasn't clear
5 to him when the certification took place.

6 Since that time, he's relied upon the
7 various labs that have sampled the coal at Coal
8 Mountain whether it was ineffective or not, and
9 that's been Mineral Labs and SGS, and he said
10 they've never had a problem with it. So no
11 formal certification since that time, but
12 Mr. Sarver believes it was certified at one
13 time.

14 Q. And certified by a third party?

15 A. Yes.

16 Q. Okay. Any idea who that third party
17 was?

18 A. I'll be honest with you, he took a
19 guess and thought it might be a company called
20 Kanawha Scales, but he could not tell me
21 definitively.

22 Q. What was that company name? I'm
23 sorry.

24 A. Kanawha.

25 Q. There are no records, though, in the

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1 possession of either Southern Coal Sales
2 Corporation or the entity owning and operating
3 the mine that showed such a certification?

4 A. Correct.

5 Q. You searched for those records but you
6 couldn't find them?

7 A. We couldn't find them.

8 Q. Okay. So as we sit here today,
9 there's no records reflecting at least that the
10 automatic sampler at Coal Mountain was certified
11 and complied with ASTM standards; is that
12 correct?

13 A. No records, correct.

14 Q. Okay. But it's Mr. Sarver's belief
15 that it did?

16 A. That it was once certified, and he
17 does believe it complies with ASTM. And for
18 that understanding he has relied on the various
19 labs that have sampled at Coal Mountain over the
20 years.

21 Q. And which particular ASTM standard did
22 it comply with?

23 A. That part -- I don't know that anyone
24 on our side knows the specifics of when you look
25 at the ASTM standards what it complies with. I

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1 think that they rely on the labs to tell them
2 whether they believe the sampler is sufficient
3 for purposes of allowing the sample to qualify
4 as an ASTM sample.

5 Q. Now, Paragon also used an automatic
6 sampler, correct?

7 A. Yes.

8 Q. Was that sampler certified at any
9 point in time?

10 A. We have not been able to locate any
11 records as to certification.

12 Q. And does Mr. Sarver have any
13 recollection or understanding as to whether
14 it had been certified?

15 A. It's very similar. On that one he has
16 relied on the labs that do the sampling there.
17 He said they've never complained about it as
18 not being sufficient to allow the samples to
19 qualify. But he did not have an understanding
20 as to whether or not a -- he has always
21 understood it to be certified, but when I asked
22 him about a formal certification he was unaware
23 of one.

24 Q. Okay. Now, did anyone at Southern
25 Coal Sales Corporation specifically instruct, in

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1 this case -- let me step back for a second.

2 Would you agree with me that Mineral
3 Labs was the third party that performed testing
4 and analysis for the coal that Southern Coal
5 Sales Corporation shipped to Algoma in 2016?

6 A. Yes.

7 Q. Okay. Did anyone at Southern Coal
8 Sales Corporation provide instruction to Mineral
9 Labs in 2016 to confirm that ASTM standards were
10 being followed with respect to the sampling that
11 was done at the Coal Mountain Mine?

12 A. Yes. I believe Mr. Sarver did that.

13 Q. Okay. And do you know when he did
14 that?

15 A. I just think it was -- one, when
16 I talked to Mr. Sarver, I think it's generally
17 understood between him and the labs that the
18 parties expect the sample to be qualified under
19 ASTM standards. Whether that's a car-top
20 sample, whether it's an automatic sampler or
21 whatever method, if the ASTM can be met, that's
22 what the goal is.

23 Q. Any idea who, particularly, at Mineral
24 Labs he had that general understanding with?

25 A. He dealt with three or four different

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1 people there. I think most of his high-level
2 conversations were with Rodney Campbell.

3 Q. Okay.

4 A. I can't remember the other -- I know
5 of two others, but I can't remember their names
6 offhand.

7 Q. Same is true of Paragon, Southern Coal
8 had a general understanding with Mineral Labs
9 that sampling was supposed to comply with ASTM
10 Standards, is that a fair?

11 A. I think that's fair, yes.

12 Q. Okay. This was previously marked in
13 Mr. Campbell's deposition as Exhibit 8. For the
14 record it's ALGOMA00014113 through 14127. Take
15 a second to look through this and tell me when
16 you're ready.

17 A. Okay.

18 Q. Okay. So if you look at the page that
19 is 14114 through the end of the document, would
20 you agree that this appears to be a certificate
21 of analysis for Permit Number M359G for Coal
22 Mountain Mine?

23 A. Yes.

24 Q. Okay. Have you looked at these
25 sorts of certificates of analysis before you

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1 understand what the document is, generally?

2 A. Yes.

3 Q. Okay. If you look a third of the way
4 down the page you see where it says, sampled by
5 customer?

6 A. Yes.

7 Q. Okay. I'll tell you that Mr. Campbell
8 at Mineral Labs previously testified that that
9 means that Southern Coal took the sample, not
10 Mineral Labs. Would you agree that that's
11 accurate?

12 MR. ROBECK: Well, I mean, there's
13 more details to it than that.

14 THE WITNESS: I can't agree with that
15 as a blanket statement.

16 BY MS. SCHULTZ:

17 Q. What do you mean by a blanket
18 statement?

19 A. Well, I think there are instances
20 where they have marked, by customer, before and
21 they clearly were there, and so I'm not sure why
22 they did that. I think it is just something
23 that has happened before, so I can't say a
24 blanket statement, sample by customer, means
25 that.

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1 And the other thing is anytime it's
2 sampled by an automatic sampler, I mean,
3 the mechanical sampler is the one sampling. So
4 there's -- there's not a -- there's not a person
5 sampling, per se. So I just -- I can't agree
6 with that as a blanket statement.

7 Q. Okay. Let me step back for a second.

8 A. Okay.

9 Q. So the automatic sampler, tell me
10 if I'm characterizing this correctly, but it,
11 literally, is automatic. And every so often
12 it takes part of the shipment and puts it in a
13 bucket, should we say, for lack of a better
14 word?

15 A. Sure.

16 Q. Okay. And that's something that
17 there's not a person that's physically running
18 the sampler, it occurs once they turn it on and
19 happens during the entire time the load-out is
20 proceeding. Is that fair?

21 A. Typically, yes.

22 Q. Okay. Is there -- Southern Coal
23 -- during this time period, 2016 at Coal
24 Mountain, was there a Southern Coal employee or
25 a employee of the entity that owned or operated

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1 the mine that watched the sampler work for each
2 of the shipments?

3 A. Not a single person.

4 Q. Okay.

5 A. At each one of the load-outs, I mean,
6 it depends on time of day who's there, who's
7 operating the load-out, things like that. I
8 mean, there would be a person at the mine,
9 it would be a person that works at the load-out,
10 that would make sure the sampler's on. If there
11 was a problem with it they would be able to,
12 hopefully, identify it, if it was a simple
13 problem, fix it, but not -- it's not a single
14 person.

15 Q. So not the same individual each
16 and every time, but there is a person for each
17 shipment that's assigned with that task, is that
18 fair?

19 A. Yeah. I mean, typically, whoever is
20 operating the load-out whenever a train is being
21 loaded, one of their responsibilities would be
22 to make sure that the automatic sampler is
23 operating and that samples are being collected.

24 Q. And was it Southern Coal's direction
25 to Mineral Labs, then, in 2016, that a Mineral

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1 Labs employee should have also been in the room
2 watching the automatic sampler work during
3 the entirety of the load-out for a particular
4 shipment at Coal Mountain?

5 A. I mean, I think, you know, it's what
6 Mineral Labs does day in and day out. I don't
7 think we would tell them how to do their job,
8 per se, but I think we would call them and tell
9 them a train is loading at a certain time and
10 that they needed to be there for the sampling of
11 the coal to say that someone was specifically,
12 you know, instructing them, that probably -- it
13 probably wasn't that formal, because, like I
14 said, that's what these guys at Mineral do day
15 in and day out. They know what they're supposed
16 to do.

17 Q. But that was Southern Coal's
18 expectation, then, that that's what Mineral
19 Labs would do, be there for the whole process?

20 A. In the ordinary course, that
21 -- absolutely.

22 Q. Okay.

23 A. They would expect Mineral Labs to be
24 there.

25 Q. Now, I'm going to represent to you

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1 that Mr. Campbell at Mineral Labs testified that
2 there were times that they weren't there for
3 shipments to Algoma in 2016, that they weren't
4 there at all when the train was being loaded;
5 they came later and just picked up a sample that
6 was provided to them. Do you have any reason to
7 believe that's inaccurate?

8 A. That happens from time to time. A
9 train is supposed to show up on a certain day.
10 It doesn't show up when expected. It shows up
11 in the middle of the night. Mineral Labs, or
12 whoever the lab is, can't always get there right
13 away. Sometimes you have to make a decision, if
14 you can't load a train right away, the railroad
15 may pull it and you may decide to load it so the
16 railroad doesn't pull it.

17 And so, I mean, if Mr. Campbell said
18 that happened, it does happen from time to time,
19 so I don't doubt him on that.

20 Q. So how do we know for a particular
21 shipment, then, whether Mineral Labs was
22 involved in any way with the sampling or whether
23 they showed up after the fact and just took a
24 bag, if you will, of the sample that was pulled
25 for a particular shipment? How do we tell that?

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1 A. Well, first of all, we think that the
2 situation you and I just described is not the
3 norm. I think that's in situations when Mineral
4 Labs could not get there on a timely basis and a
5 decision had to be made. Because I don't think
6 their records are always consistent, I don't
7 think you can solely rely on it saying sampled
8 by customer to determine whether Mineral Labs
9 was there or not.

10 Q. Okay. What records do we rely on,
11 instead, then, of Southern Coal or the entity
12 that owns or operates the mine to show us
13 Mineral Labs' records are inaccurate as to who
14 took the sample?

15 A. I'm not aware of any other records.

16 Q. Okay.

17 A. So it would be the people that were
18 there or the people that were in charge of
19 scheduling Mineral Labs. But I'm not aware of
20 any other written records.

21 Q. And how do we know who those people
22 were for a particular shipment, the person that
23 was onsite at the mine that was supervising the
24 sampling of the coal?

25 MR. ROBECK: You mean whether it was

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1 a person from Mineral Labs or a person from
2 Southern Coal?

3 BY MS. SCHULTZ:

4 Q. No. I think what Mr. Ball testified,
5 and please correct me if I'm wrong, is that the
6 only person that would be able to disagree with
7 what is in Mineral Labs' certificate of analysis
8 as to who took the sample is the person from the
9 mine that was onsite for the load-out
10 supervising the load-out, right?

11 A. Well, I don't know if it would be the
12 only person.

13 Q. Okay.

14 A. But, I mean, that would be a person,
15 that if they had a specific recollection, which
16 I'm sure they wouldn't, at this point, given how
17 many trains load-in at a load-out, and this is
18 from, you know, three years ago, but that would
19 be a person that could dispute that.

20 MR. ROBECK: And Mr. Campbell also
21 testified that you could ask the sampler that
22 was actually there, too.

23 MS. SCHULTZ: You mean the individual
24 from Mineral Labs?

25 MR. ROBECK: Yeah. Right.

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1 MS. SCHULTZ: Okay. But he also
2 testified that what -- the individual at Mineral
3 Labs would have filled out the certificate of
4 analysis in a particular way such that it would
5 indicate whether they observed the sample being
6 taken.

7 MR. ROBECK: He said that that's what
8 he believed the records indicate, but that if
9 there was a discrepancy in that, you'd have to
10 go to the person or the backup documents that
11 they didn't produce.

12 BY MS. SCHULTZ:

13 Q. Let me ask the question a different
14 way here.

15 So is there a particular shipment
16 that Southern Coal Sales Corporation made to
17 Algoma in 2016 that you can identify as you
18 sit here today where Mineral Labs said that
19 the sample was taken by the customer, meaning
20 Southern Coal Sales Corporation, but you believe
21 it was not?

22 MR. ROBECK: So you're talking about
23 every single train shipment?

24 MS. SCHULTZ: What I'm trying to
25 understand is, you know, he said that Mineral

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1 Labs' records are not always accurate; he
2 believes that to be true; that when they say
3 they're sampled by a customer there's times when
4 that's not accurate. I'm asking if there's
5 anyone that he can identify where that's true.

6 MR. ROBECK: If you can do that right
7 now, go ahead.

8 BY MS. SCHULTZ:

9 Q. I mean, to be clear, one of the topics
10 for the deposition today was the sampling that
11 was done for each and every shipment to Algoma.
12 So if you're saying that Mineral Labs' records,
13 which is the only record that we have of who did
14 the sampling, written record, is incorrect, I'm
15 wondering which ones are incorrect, and how you
16 know that they are?

17 A. Well, --

18 MR. ROBECK: Go ahead.

19 THE WITNESS: -- I can't recall
20 a specific shipment off the top of my head,
21 but my understanding is there are a couple -- at
22 least a couple of shipments that were identified
23 by Mineral Labs as being sampled by the
24 customer, and they were there.

25 I think there are also instances where

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1 Mineral Labs has a certificate that says,
2 sampled by customer, but I think we were
3 invoiced for travel time and things like that.
4 So I think in those instances they were clearly
5 there.

6 BY MS. SCHULTZ:

7 Q. Well, they had to get there at
8 some point to pick up the sample, right?

9 A. They --

10 Q. They tested it, right? They provided
11 testing of something.

12 A. Yeah. They were there.

13 Q. So why wouldn't they bill you for
14 travel time for the time it took them to come
15 pick up whatever sample was provided to them?

16 A. I'm just saying, I think that's
17 another document that could contradict the
18 -- you're asking what evidence would we have to
19 say to the contrary, a document that says they
20 billed us for travel time would be a document
21 that would contradict the fact they weren't
22 there.

23 Q. Well, I mean, it wouldn't show that
24 they were there during the load-out, would it?

25 A. It would show that they billed us for

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1 traveling there on that day.

2 Q. Right.

3 A. That's all I'm saying.

4 Q. Okay. Fair enough.

5 A. I mean, I don't think it says,
6 definitively, one way or the other, but it
7 proves that they were there.

8 Q. To your knowledge, were there any
9 instances in the 2016 shipments from Southern
10 Coal to Algoma where Southern Coal delivered a
11 sample directly to the lab?

12 A. Not that I'm aware of.

13 Q. Okay. The records that you were just
14 testifying regarding that showed a travel time
15 for existence from the lab, are those documents
16 -- do you know whether those were produced in
17 this litigation?

18 MR. ROBECK: Could you read the
19 question back, please?

20 THE REPORTER: Sure.

21 (Referred-to testimony read back.)

22 BY MS. SCHULTZ:

23 Q. Let me re-ask the question.

24 You just testified that you thought
25 there were documents out there that showed that

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1 Mineral Labs billed Southern Coal for travel
2 time from the lab to the load-out, right?

3 A. Right.

4 Q. Are you aware whether those documents
5 were produced in this litigation?

6 A. I don't know.

7 Q. Okay. And where are those documents
8 kept within Southern Coal?

9 A. You have to stop me here, if you think
10 I should stop, but I have this understanding
11 from the prior counsel in this case, Mr. Hunter
12 from Frost Brown Todd.

13 MR. ROBECK: I think invoices were
14 produced. My understanding is invoices were
15 produced.

16 MS. SCHULTZ: Okay. Okay.

17 BY MS. SCHULTZ:

18 Q. And the testimony that you've given,
19 we started talking about Coal Mountain, but I
20 want to know, is the same true with respect to
21 load-outs at Paragon, that you're not sure or
22 you -- you're not sure that Mineral Labs'
23 certificate of analysis are accurate as to who
24 took the sample?

25 A. Well, I think in all instances the

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1 sample was physically taken by the automatic
2 sampler. Whether they were physically there to
3 pick up the bag or not, I think that my earlier
4 statements apply to Coal Mountain and Paragon.

5 Q. Okay. And let me make sure that we're
6 not speaking past one another. With respect to
7 shipments in 2016 from Southern Coal to Algoma
8 from Coal Mountain, is it your testimony that
9 you believe Mineral Labs was present onsite
10 during the load-outs to observe the automatic
11 sampler working; is that right?

12 A. Yes.

13 Q. And is the same true of Paragon?

14 A. Yes.

15 Q. Okay. And was it a Southern Coal
16 employee or a Mineral Labs employee that would
17 have physically taken the sample out of the
18 sampling room and left the facility with it, if
19 you will, for Coal Mountain, let's start with?

20 A. Typically, it would be a Mineral Labs
21 employee. Do I think there are instances where
22 a Dynamic Energy or an A&G Coal employee would
23 do it if Mineral Labs couldn't get there quick
24 enough or something like that, and we had to
25 load a train in one of those instances that I'm

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1 talking about, I think there are probably
2 instances of both examples of what you described
3 happening. But in the ordinary course, it
4 should be Mineral Labs taking it.

5 Q. Okay. And I apologize if I already
6 asked this question, but Mineral -- Mr. Campbell
7 at Mineral Labs testified that, to the extent
8 they observed the automatic sampler working,
9 they would indicate as much in the certificate
10 of analysis.

11 Do you have any reason to -- to
12 disagree with their records as to that point?

13 A. No.

14 MS. SCHULTZ: Okay. Do you want to
15 take a quick break, a couple minutes?

16 (Recess taken.)

17 BY MS. SCHULTZ:

18 Q. For Coal Mountain in 2016, do you know
19 who the employees were that worked the load-out?

20 A. I think Tiger Lambert was responsible
21 for the entire job, and I think the person that
22 worked with Tiger that would help with coal
23 shipments was Todd Bradford. As far as, like,
24 hourly workers and things like that, I don't
25 know who those would have been.

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1 Q. What about Paragon?

2 A. Paragon was the person that would
3 have been in charge. I know Scott Mead was the
4 primary person in charge for a while, but Scott
5 left at some point. I'd have to check. I don't
6 remember when Scott left, but he definitely
7 would have been the person in charge while he
8 was there.

9 Q. Okay. And maybe I'm making this
10 more formal than it is, but for Coal Mountain,
11 for example, if a third party comes onsite, do
12 they have to sign in or anything like that?

13 A. Technically speaking, from MSHA you're
14 supposed to, but if it's someone like a lab who
15 is there regularly, that tends to get a little
16 more relaxed versus like if someone that just
17 showed up to go onsite. So it really depends on
18 who the third party is.

19 Q. Okay. So there's not necessarily a
20 written record if the lab shows up for either
21 Coal Mountain or Paragon what particular time
22 they came on that day?

23 A. No.

24 MS. SCHULTZ: Okay. That's all I
25 have.

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1 MR. BOLLIN: Just a few more
2 questions.

3 THE WITNESS: Okay.

4 FURTHER EXAMINATION

5 BY MR. BOLLIN:

6 Q. Do you know the coal production
7 capacity of the mines from which Southern Coal
8 Sales Corporation obtained coal to sell to
9 Algoma in 2015, '16 and '17?

10 MR. ROBECK: Are you talking about the
11 ones that are owned by Justice Company, --

12 MR. BOLLIN: Sure.

13 MR. ROBECK: -- because there was
14 other coal that was purchased?

15 MR. BOLLIN: Sure. Understood. Only
16 those owned by Justice Companies.

17 THE WITNESS: So capacity at the mines
18 is, typically, dictated by what the market will
19 allow. Some of these mines, you know, for
20 example, Tams in 2015 [REDACTED] running at a [REDACTED] to
21 [REDACTED] ton run rate. Tams is capable of running
22 at [REDACTED] times that, if the market
23 justified it. And what I mean by the market
24 justifying it is there is tougher mining
25 conditions on certain parts of the permit that

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1 have higher ratios and things like that, but if
2 the market is high enough that you can mine \$85
3 coal, then the capacity can go up.

4 As we were mining it, Coal Mountain's
5 capacity was -- it varied, but it was in the
6 range of [REDACTED] to [REDACTED] per month.

7 BY MR. BOLLIN:

8 Q. What time is this?

9 A. The first half of 2015, we had just
10 reacquired Coal Mountain. We acquired it in
11 February of 2015, and it took us three or four
12 months to get things up and running because it
13 had been completely idled by the prior owners.
14 So that run rate would have started taking
15 effect late 2015, and that would have been for
16 all of 2016 up until we sold it in January of
17 2017.

18 Q. And how did you determine the run
19 rate?

20 A. That's just based on the amount of
21 equipment we had available, the mining ratio.
22 You know, it's just a -- it's a calculation
23 based on the machines can move a certain amount
24 of material per hour. And then, you know, we
25 determined that number based on the amount of

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1 sales that we have, though, ultimately.

2 Q. So it's a backwards-looking number?

3 A. For the most part, yes.

4 Q. Do you make projections of what your
5 capacity is?

6 A. No.

7 Q. What was the -- what was the
8 production capacity for Paragon in 2015 and
9 2016?

10 A. The mine that supplied Paragon is
11 called A&G. We refer to it as A&G 21. And it's
12 another example that it has coal reserves that,
13 if the market is generous enough, you can -- you
14 can mine at much higher run rates than what we
15 were, but its capacity was anywhere from [REDACTED]
16 to [REDACTED] tons per month.

17 Q. And, again, is that a
18 backwards-looking number?

19 A. Pretty much, yes.

20 Q. Does that include, for example, time
21 in 2016 during the summer when the main shovel
22 was down at A&G?

23 A. Obviously, that would impact
24 production. You know, we had a situation where
25 we got a bad load of fuel at A&G that shut down,

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1 roughly, a half-dozen machines. You know, that
2 impacts production. The numbers I'm giving you
3 is, at its normal run rate, that's what its
4 capacity would be. But, obviously, when the
5 main shovel is down, that's going to severely
6 impact production.

7 Q. Mr. Jay Justice testified previously
8 that the overburden at A&G was much bigger, much
9 more extensive than it was at Coal Mountain.
10 Did you know that?

11 A. Yes.

12 Q. Okay. Where does the price point have
13 to be in order for it to be profitable to mine
14 from A&G?

15 A. What I just described to you is very
16 small scale mining at A&G, and that's probably
17 -- you know, that's the most you can mine when
18 the market is less than a hundred dollars. If
19 the market goes above a hundred dollars,
20 A&G's capacity could be increased to [REDACTED] or
21 [REDACTED] tons a month, but the ratio goes up
22 significantly after that small amount of
23 tonnage. But at the run rates we did in 2015
24 and 2016, that's all that we could stand under
25 those market conditions.

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1 Q. And when you say [REDACTED], you're
2 talking about [REDACTED] a ton?

3 A. Yes.

4 Q. How did Southern Coal Sales
5 Corporation know what coal was available to
6 sell?

7 A. Well, from our exercise earlier today,
8 you know that the management on the operations
9 side and the sales side is similar, so I think
10 it's more of a function of Jay Justice knowing
11 how many tons could be sold and then having the
12 production to meet the requirements.

13 Q. I've got a few mop-up questions from
14 earlier, so I'm going to bounce around a little
15 bit. If I lose you when I'm bouncing, let me
16 know and I'll clarify.

17 A. Okay.

18 Q. Did Southern Coal Sales Corporation
19 have insurance in 2016?

20 A. Just so I'm sure, like general
21 liability insurance?

22 Q. Sure.

23 A. Yes.

24 Q. Okay. What kind of insurance did it
25 have?

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1 A. It's a structured program where the
2 first -- I'm wanting to say the [REDACTED]
3 dollars is self-insured, and then above that you
4 have different layers of, like, a primary up to
5 [REDACTED], then an excess policy up to [REDACTED] and
6 then another excess policy up to, I think, [REDACTED]

7 [REDACTED]
8 You know, obviously, auto insurance
9 and things like that would be a little
10 different, but, yes, it is insured.

11 Q. But that's for Southern Coal Sales
12 Corporation?

13 MR. ROBECK: Are these mop-up
14 questions all outside the scope of the topics
15 for the 30(b)(6), or is it just that one and
16 then you're going to go back inside the topics?

17 MR. BOLLIN: I'll take that as an
18 objection.

19 THE WITNESS: Southern Coal Sales
20 would be listed as a named insured on Southern
21 Coal Corporations policy.

22 MR. BOLLIN: Thank you.

23 BY MR. BOLLIN:

24 Q. In April of 2016, reviewing the
25 Southern Coal Sales Corporation's bank

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1 statements, it had a balance of [REDACTED] at the
2 beginning and end of its -- of the month of
3 April 2016, does that sound about right?

4 MR. ROBECK: From memory, from what we
5 looked at earlier?

6 MR. BOLLIN: Well, every single month
7 we looked at it was there, so, yeah, that's what
8 I was doing.

9 MS. BYROADE: I mean, it says what it
10 says. Do you have a question?

11 BY MR. BOLLIN:

12 Q. What was -- how could Southern Coal
13 finance its obligations under the amending
14 agreement with Algoma? Was it required to
15 borrow, was it required to spend money from
16 other Justice entities, or was it able to
17 perform the agreement on its own?

18 A. I'm struggling with what obligations
19 it would have, like monetary obligations to
20 Algoma? I mean, its commitment was to deliver
21 coal.

22 Q. Right. To fulfill its obligations to
23 Algoma, it requires some outlay of cash, right?

24 A. I mean, for, like, scheduling trains
25 or ...

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1 Q. That would be one.

2 A. Yeah.

3 Q. And Southern Coal did not have
4 -- Southern Coal Sales Corporation did not have
5 cash of its own to pay for the trains that it
6 needed, correct?

7 MR. ROBECK: Objection; form.

8 This is all predicated on a beginning
9 and ending monthly balance. That's --

10 MR. BOLLIN: You tell me.

11 THE WITNESS: Okay. I think I
12 testified to this earlier. I think it depends
13 on the timing of incoming receipts from coal
14 sales. If they had adequate cash available at
15 that time to pay for a train, they would do so.
16 If they didn't, they would borrow it from either
17 their parent company or an affiliate.

18 BY MR. BOLLIN:

19 Q. Aside from the agreements in
20 lieu before, were there any other minutes of
21 any other board meetings of Southern Coal Sales
22 Corporation?

23 A. No.

24 MR. BOLLIN: Mark, what are we going
25 to do about the ledger request?

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1 MS. BYROADE: On the record or going
2 off the record?

3 MR. ROBECK: I don't care. We'll, you
4 know, huddle and talk about it.

5 MR. BOLLIN: Okay. Well,
6 unfortunately, I can't conclude the deposition
7 without an opportunity to review those, the
8 answer to --

9 MR. ROBECK: Well, I don't have it
10 to hand to you right now, so that does matter.

11 MR. BOLLIN: I understand. That's why
12 I'm trying to talk to you about it. That's all.

13 MR. ROBECK: Okay.

14 MR. BOLLIN: As you know, a lot of the
15 questions that we asked today, the answer can be
16 found there. So the question is, do we go to
17 the Court together, or do I go to the Court
18 alone?

19 MR. ROBECK: Well, I said that we
20 would talk about it amongst ourselves. I'm not
21 going to talk about it and then ignore you.

22 MR. BOLLIN: I appreciate that. I do.

23 MR. ROBECK: I'll let you know what
24 we're going to do, and I'll let you know when
25 we're going to do it.

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1 MR. BOLLIN: Okay. So subject to
2 that, I don't have any further questions today.

3 Thank you.

4 MR. ROBECK: Okay.

5 (Deposition concluded -- 5:35 p.m.)

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1 Stephen Wayne Ball

2

3 C E R T I F I C A T E

4

5 I do hereby certify that the aforesaid
6 testimony was taken before me, pursuant to
7 notice, at the time and place indicated; that
8 said deponent was by me duly sworn to tell the
9 truth, the whole truth, and nothing but the
10 truth; that the testimony of said deponent was
11 correctly recorded in machine shorthand by me
12 and thereafter transcribed under my supervision
13 with computer-aided transcription; that the
14 deposition is a true and correct record of the
15 testimony given by the witness; and that I am
16 neither of counsel nor kin to any party in said
17 action, nor interested in the outcome thereof.

18

19 WITNESS my hand and official seal this
20 8th day of November 2018.

21

22



23 Ryan K. Black

24

25